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TREASURY INSPECTOR GENERAL'S OFFICE INVESTIGATION OF FBI FILES MATTER

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Treasury Inspector General's Office...

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SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

SPECIAL HEARING

Printed for the use of the Committee on Appropriations

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TREASURY INSPECTOR GENERAL'S OFFICE INVESTIGATION OF FBI FILES MATTER

MONDAY, DECEMBER 2, 1996

U.S. SENATE,
SUBCOMMITTEE ON TREASURY, POSTAL SERVICE,
AND GENERAL GOVERNMENT,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 2:03 p.m., in room SD–192, Dirksen Senate Office Building, Hon. Richard Shelby (chairman) presiding.

Present: Senators Shelby and Kerrey.

Also present: Senator Hatch.

CONGRESSIONAL WITNESSES

OPENING REMARKS OF SENATOR SHELBY

Senator SHELBY. The subcommittee will come to order.

I want to thank today's witnesses in advance for their willingness to appear before the subcommittee this afternoon.

We have called this hearing to answer questions and concerns that have arisen about an investigation that we understand is being conducted by the Treasury Inspector General's Office into congressional testimony given by Secret Service agents on behalf of their agency in the FBI files matter.

The subcommittee hopes today to clarify the conflicting information it has received about the nature and the purpose of the investigation, as well as address some very serious issues and concerns that have been raised by several national law enforcement organizations.

On October 22, I received a letter from Senator Grassley informing the subcommittee that a potentially criminal investigation had been initiated by the Treasury Inspector General's Office into the congressional testimony of two Secret Service agents who appeared on behalf of their agency before the House Committee on Government Reform and Oversight on the FBI files matter.

According to Senator Grassley's letter, on October 16, 1996, his staff was informed by the counsel for Treasury Inspector General that the Inspector General's Office had initiated a potentially criminal investigation into the two Secret Service agents who had testified on behalf of their agency before the House on the FBI files matter and that the investigation was requested by Senator Ted Stevens and Congresswoman Cardiss Collins.

Senator Grassley then sent a similar letter to Senator Ted Stevens making him aware of the investigation and the fact that the

Inspector General's Office was representing that the investigation was being conducted, in part, due to his request, Senator Stevens' request.

On October 24, 1996, Senator Stevens wrote to the Treasury Inspector General, Valerie Lau, who's with us today, demanding that she clarify that he had nothing to do with the request for such an investigation.

Ms. Lau responded later that same day to Senator Stevens' request, writing that she was well aware—telling this to Senator Stevens—that you have never requested the investigation of the two Secret Service agents and that her office has not represented to either the Service or the office of Senator Grassley that any specific agents are the subjects of a potentially criminal investigation.

On that same day, October 24, 1996, Senator Bond and I wrote to the Secretary of the Treasury demanding a full and complete explanation of the investigation. On November 1, 1996, we received a letter from Edward Knight, the General Counsel of the Treasury, informing us that Congresswoman Collins' request had been forwarded to the Treasury Inspector General for whatever action she deemed appropriate.

On November 7, 1996, Senator Bond and I again wrote to Secretary Rubin asking that he respond directly to our request for an explanation. We received a response from the Secretary to our November 7 letter this morning.

Over the past month, the subcommittee has received numerous letters raising serious concerns about the inspector general's investigation.

Specifically, the subcommittee received a copy of an October 31, 1996, letter to Secretary Rubin from the Fraternal Order of Police questioning the motivation and validity of the inspector general's investigation.

On November 5, 1996, the Federal Law Enforcement Officers Association wrote to the subcommittee asking that a full and open inquiry be made by the Senate as to why the Treasury Inspector General initiated an investigation into the testimony of these two career law enforcement officers.

Both letters questioned the propriety of the inspector general's investigation, raised the specter of retribution, and noted the chilling effect it could have on law enforcement personnel who testify before Congress on behalf of their respective agencies.

In light of the significant concerns this investigation raises about the ability of career law enforcement officers and civil servants to testify before Congress without fear of reprisal and the conflicting information about the exact nature of this investigation, including whether it is potentially a criminal investigation, who requested it, who is being investigated and for what, we have called this hearing today to resolve these inconsistencies and hopefully address the broader concerns that have been brought to the subcommittee's attention by the Fraternal Order of Police and the National Law Enforcement Officers Association.

Today I want to be clear, however, that this hearing is not—and I say again, is not—about the FBI files matter. We are not here today to look into the truth or facts of that matter which in the

subcommittee's view is properly being considered by the independent counsel.

In addition to the Treasury Inspector General and representatives from the Fraternal Order of Police and the National Law Enforcement Officers Association, the subcommittee also requested that the Secret Service appear to testify about their knowledge of the Treasury Inspector General's investigation. The subcommittee received a letter from the Secret Service on November 27, 1996, providing a chronology of events in lieu of providing testimony before the subcommittee today.

The letter explains—and I quote from the letter:

> Given what has already transpired in this matter and given that, as is set out below, the Secret Service does not know exactly what the Treasury Inspector General is investigating, we do not feel at this time that it would be appropriate for Secret Service representatives to give testimony concerning the Treasury Inspector General's investigation.

The letter then goes on to state for the record that—and I am now quoting from the letter again.

> On October 16, 1996, Senator Charles Grassley wrote to Treasury Secretary Robert E. Rubin requesting that Secret Service Agents John Libonati and Jeffrey Undercoffer answer certain questions concerning an August 1, 1993, WAVES computer list relevant to the FBI background files case. These criminal investigators constitute two of the Secret Service agents serving as agency contacts in connection with congressional inquiries involving the FBI background files case.
>
> Senator Grassley's request followed a September 25, 1996, letter to Secretary Rubin from Representative Cardiss Collins regarding a June 1993 Secret Service WAVES computer list also relevant to the FBI background files case. In naming Secret Service Agents Libonati and Undercoffer specifically, it appeared that Representative Collins was requesting that the Treasury Inspector General investigate the preparation of testimony before her committee by these Secret Service agents on the grounds that their testimony was erroneous.

The letter further reads:

> Since involvement by Special Agents Libonati and Undercoffer in responding to Senator Grassley's October 16 request might be problematical in light of Representative Collins' letter, the Secret Service's Chief Counsel, John Kelleher, contacted Ms. Lori Vassar, Counsel to the Treasury Inspector General, on Friday, October 18, 1996. On that date it was confirmed that the Treasury Inspector General was pursuing an investigation regarding Special Agents Libonati and Undercoffer based upon two referrals: (1) Representative Collins' letter dated September 25; and (2) a June 18, 1996, letter from Senator Ted Stevens to Inspector General Valerie Lau.
>
> As a consequence, on October 18, 1996, the Secret Service first became aware that the Treasury Inspector General investigation involving its agents had been opened based upon these congressional letters. Senator Stevens' letter had not been brought previously to our attention by the Treasury Inspector General.
>
> On Monday, October 21, 1996, Inspector General Lau requested a meeting with Secret Service officials to discuss the pending investigation. Assistant Director for Inspection K. David Holmes and Chief Counsel Kelleher attended on behalf of the Secret Service. Treasury Inspector General Lau, Counsel Vassar, Deputy Inspector General Richard B. Calahan, and Regional Inspector General for Investigations Emily Coleman met with these Secret Service representatives. At this meeting, the Secret Service was again advised that there was an active investigation of Special Agents Libonati and Undercoffer, and, further. that this matter was potentially a criminal investigation. The Office of Inspector General representatives would not divulge with any specificity precisely what these agents were alleged to have done wrong, or what exactly the Treasury Inspector General would be investigating. The Secret Service still has not received any such information.

Since the Secret Service will not be testifying before the subcommittee this afternoon, I am submitting the entire letter for the record. It will be made part of the record without objection.

In addition to the members of this subcommittee, there are several other Senators who share a concern in this matter. Specifically, Senator Grassley, that I mentioned earlier, Senator Bond, Senator Stevens, and Senator Hatch. I have invited them to join us today if they have any questions or would like to submit a statement for the record.

Again, I would like to state at the outset that I very much appreciate the Treasury Inspector General's willingness to appear today and to hopefully assist the committee in addressing the concerns that have been raised and clarify the conflicting information the subcommittee has received about the nature of this investigation.

We have asked the Fraternal Order of Police and the National Law Enforcement Officers Association to appear before the subcommittee on the first panel so that the Treasury Inspector General has an opportunity to fully respond to any concerns that they raise in their testimony.

Senator Kerrey.

STATEMENT OF SENATOR KERREY

Senator KERREY. Thank you very much, Mr. Chairman.

First of all, just briefly, I look forward to the witnesses.

I alert the witnesses that my principal area of concern is the criteria that the inspector general uses not just to pursue an investigation, but what criteria the inspector general would use to say no to a Member of Congress who has put in a request for an investigation of this type and what precedents exist for doing an investigation of the testimony that was offered before a congressional committee.

I am not interested in hearing objections that people might have to an inspector general's evaluation based upon the fear that in and of itself the investigation could be harmful to a career.

I must say that we have done many investigations and witnessed many investigations in the executive branch. Both Senator Shelby and I sit on the Intelligence Committee. We had an inspector general investigation of CIA personnel that not only ruined their career but put them in jail. So, the fact that this ruffles feathers, the fact that it makes people upset is not all by itself cause for us to say that the investigation should not go forward.

But I must say that I do find it unusual—and I am going to alert you right at the moment—that an investigation would proceed based upon a single letter from a Member of Congress where the investigation is occurring as a consequence of testimony that was delivered to Congress. I searched my own memory to try to recollect whether or not I have got an incident in my own memory bank where this has happened in this fashion, and I do not come up with one.

Though it might be difficult at times to say no to a Member of Congress, I am sure that you have got criteria that would lead you to a conclusion to say, no, we are going to not only have to send a prompt letter, but we are going to have to send a letter to the Member of Congress and say, no, we do not do investigations of this kind of thing. If you want to have the witness back up before your committee, fine, have them come back before your committee,

but we are not going to have the Inspector General's Office do this sort of thing.

Mr. Chairman, I appreciate your calling this hearing and I look forward to the witnesses.

Senator SHELBY. Senator Hatch, we appreciate your joining us today.

STATEMENT SENATOR HATCH

Senator HATCH. Thank you, Mr. Chairman. Thank you for the opportunity to appear before your subcommittee today and mention a few things that are on my mind.

The subject matter of your hearing is one of great importance to me. During this past summer and fall, the Judiciary Committee held several hearings as part of an investigation into what has been called the FBI files matter or Ex-files. That investigation stemmed from the discovery that the White House improperly had obtained hundreds of highly confidential FBI file summaries on individuals who no longer worked at the White House. A major concern for the committee was whether these files had been intentionally and wrongfully obtained or had been obtained due to a bureaucratic snafu, as the White House had claimed. As you know, U.S. Secret Service agents John Libonati and Jeff Undercoffer cooperated with our inquiry and their sworn testimony was critical to learning the truth about these matters.

While several outstanding issues remain unresolved, the committee's efforts have produced sworn testimony from Mari Anderson, a former White House employee, indicating that the White House Office of Personnel Security knew that FBI file summaries on Republicans had been wrongfully acquired. Moreover, the office requested files from lists it knew to be outdated, and pages from a log that recorded the removal of documents from the OPS are missing—in fact, almost 6 months' of pages. And she testified that she remembers making notations during that time in the logs. The testimony of Agents Libonati and Undercoffer substantiate much of Ms. Anderson's testimony.

Since the first days that this incident became public, the White House has argued that the U.S. Secret Service was at fault for much of the problem because the Service supposedly had supplied the White House with an out-of-date copy of the passholder list. According to the White House, Craig Livingstone and Anthony Marceca innocently relied on that list mistakenly to request hundreds of FBI file summaries on Reagan and Bush administration officials.

In order for the White House bureaucratic snafu defense to have succeeded, blame needed to be laid at the feet of the Secret Service. Unfortunately for the White House, the Secret Service and two of its agents, John Libonati and Jeff Undercoffer, were not willing to fall on the White House's sword. Instead, Agents Libonati and Undercoffer told the truth. When questioned by the Judiciary Committee, Agents Undercoffer and Libonati answered questions about the computer programming processes used to generate lists of White House passholders.

Mr. Chairman, as you know, it is critical for congressional committees to be able to call on the knowledge and expertise of persons

like Agents Libonati and Undercoffer if the Congress is expected to conduct legitimate oversight. In a case like this one, it was necessary for the Judiciary Committee to seek the assistance of experts like Agents Libonati and Undercoffer in order to learn whether the Ex-files matter stemmed from a negligence on the part of the Secret Service. Those agents responded to the committee's request with the type of professionalism that one would expect from members of a highly respected Federal law enforcement agency.

Therefore, one can understand my concern when I learned that these two fine agents had become the subjects of an investigation by the Inspector General's Office at the Treasury Department. After all, the Judiciary Committee, like your subcommittee, needs to know that the persons with whom it deals in any administration are honest and forthright. Although I do not know all of the facts surrounding the provenance of the investigation, the media has reported that the investigation may have been triggered at least in part by an official at the White House. And I cite the Washington Times, November 10, 1996, and October 28 and October 26 editions. The timing, scope, and generation of this investigation give credence to the notion that this inspector general inquiry is simply a politically motivated payback. Certainly Federal employees will think twice before they cooperate with Congress in any matter involving the White House or the President's political cronies.

I am deeply troubled by the prospect that this investigation could have been prompted by an intent to retaliate against these agents or to chill future conduct of like-minded public officials. No investigation should be started out of such illegitimate motives. But, then again, this is nothing new. The White House followed just such an ignoble path when it turned the FBI on Billy Dale after it fired him from the Travel Office. More recently, we have learned that Clinton apologists plan to begin raising money to fuel a national smear campaign against Independent Counsel Kenneth Starr. I hope that is not true, but the leader of that indicates that it is true. But I hope it is not.

In closing, it seems to me that if the Clinton administration is truly intent on putting aside partisan politics and setting the interests of the Nation ahead of its own political fortune, the White House will put an end to this sort of intimidation-by-character assassination. Executive branch employees who lawfully and truthfully cooperate with congressional inquiries should not fear that they are going to be punished for doing so.

So, I want to personally thank you and Senator Kerrey for holding this very important hearing and allowing me this opportunity to say these few words in testimony because I feel very deeply about it and I will take great interest in what you folks uncover today.

Senator SHELBY. Thank you, Senator Hatch.

PREPARED STATEMENT

Senator Grassley has requested that a statement be included in the record on his behalf, and without objection it will be.

[The statement follows:]

PREPARED STATEMENT OF SENATOR GRASSLEY

Mr. Chairman, members of the subcommittee, thank you for inviting my testimony in the matter of the Treasury Inspector General's harassment of two dedicated agents of the United States Secret Service. I appreciate the chance to fill in the earliest part of the chronology. And I commend you for your perseverance and continued leadership in publicly airing these important issues.

I cannot overstate how important this matter is. The highest priority of the Congress should be to maintain the integrity of our government. Indispensable to that is our obligation to always pursue the truth. It's what keeps our open form of government viable. We should always insist on knowing the truth. We must defend those who tell the truth, and deal harshly with those who try to punish truth-tellers.

The issue before us today involves truth-tellers and their adversaries. It's a case of government trying to stifle the truth by attacking the bearers of truth. The bearers of truth are two honorable, dedicated Secret Service agents whose message happened to contradict the cover story of the White House in the FBI files matter. The cover story was that the unauthorized acquisition of hundreds of confidential files of private citizens by political White House operatives was "a bureaucratic snafu." The testimony of the two agents has systematically helped the Congress debunk the cover story. Thus, there is a clear motive for the administration's retaliation against these witnesses.

Congress always regards as dangerous attempts by administrations to chill the environment for other potential truth-tellers. Bureaucracies do this by attacking the messengers, like white corpuscles snuffing out a germ. The more Congress lets them get away with it, the less we learn the truth, and the harder it is for us to perform an effective check and balance against the executive branch.

In the instance before us, the issue is much more serious. The perpetrator is a law enforcement entity. The great powers of law enforcement allow for the greatest abuses against one's liberty, which is the most precious right bestowed on us by the Constitution. When law enforcement abuses its authority, it undermines the administration of justice. We cannot tolerate that as a society. This Congress cannot tolerate it, and will not.

On October 11 of this year, I wrote to Secret Service officials to request a copy of a White House passholder list from 1993 with various names crossed out by White House officials. Such a list had been referred to by Mari Anderson, former executive assistant to White House Personnel Security Director Craig Livingstone, in her October 1 deposition to investigators of the Senate Judiciary Committee.

Having received a copy of the list, I then sent a letter to Treasury Secretary Robert Rubin, dated October 16, requesting a briefing for my staff on the significance of the list by the Secret Service's two designated experts on the subject, Mr. John Libonati and Mr. Jeffrey Undercoffer. I requested the briefing for either October 17 or 18.

A copy of my two letters are attached to my written testimony for the record.

I received no response from Treasury by the afternoon of Friday, October 18, even after repeated calls by my staff to Treasury officials. Finally, my staff was told by an official from Treasury's Legislative Affairs office that the Treasury IG was investigating the two agents at the request of Senator Ted Stevens and Congresswoman Cardiss Collins. It was a bipartisan request. My staff was instructed to call Lori Vasser, counsel to the Treasury IG, for all the details.

Whereupon my staff called Ms. Vasser, in the presence of the chief investigator for the Senate Judiciary Committee, to ascertain the facts. During that phone call, Ms. Vasser explained to my staff that the two Secret Service agents, by name, were being investigated at the request of Senator Stevens and Congresswoman Collins. The committee investigator prompted my staff to ask if the investigation were "criminal." The answer my staff received from Ms. Vasser was, "It's potentially criminal." My staff simultaneously wrote down the word "potentially" for the committee investigator on a note pad to communicate Ms. Vasser's response.

My staff then asked Ms. Vasser to explain which specific words in Senator Stevens' June 18 letter to the IG allowed the IG to interpret this as a request to investigate the two agents. Ms. Vasser responded by reading the Stevens letter verbatim. The question was repeated twice more by my staff, and the letter was bead verbatim twice more by Ms. Vasser. It was clear at that point that the IG's office was unable to justify its contention that Senator Stevens indeed requested the investigation of agents Libonati and Undercoffer.

Subsequently, my staff reported to me that the committee investigator was told by a Treasury Legislative Affairs official that the investigation of the two agents was "potentially criminal." Staff then called Secret Service officials who corroborated

that there was a potentially criminal investigation, according to the IG, and that it had been requested by Senator Stevens and Congresswoman Collins.

Thus, there is no doubt in my mind that the IG either intended to undertake a criminal investigation of these two agents, or wanted to intimidate them and chill the environment. Either way, this is serious business. A potential criminal investigation is the jurisdiction of the independent counsel; intimidation would constitute retaliation against witnesses of Congress.

Meanwhile, there appears to be doubt in the mind of the IG. On October 24, the IG wrote to Senator Stevens stating that her office had "not represented to either the Service or the office of Senator Grassley that any specific agents are the 'subjects' of a 'potentially criminal' investigation."

Mr. Chairman, that statement is an outright falsehood. There is corroborating evidence against that statement, as I have outlined. I suggest that the IG is ill-informed about how her office has characterized its investigation. If so, I suggest she have an opportunity to correct the record.

My guess as to what happened is this. Perhaps someone put the IG up to this. Perhaps she didn't understand the consequences of her office's actions. Perhaps she did but didn't think she'd get caught.

It was curious to me that, whenever anyone from Treasury discussed the investigation, the name "Ted Stevens" would surface first as the requester. That signalled to me that Senator Stevens was being used for political cover, to make the request look bipartisan. But the Stevens request came fully 1 month before the two agents ever testified before a House committee, which testimony triggered the request by Congresswoman Collins. There clearly was no nexus between Senator Stevens and the investigation of the two agents. Even a Treasury spokesman contradicted the IG, telling a Washington Post reporter on October 24 that the request for investigation included Senator Stevens.

When the IG was forced that same day to back off the assertion that Senator Stevens was involved with the request, the investigation suddenly looked politically inspired, as I truly believe it was. Absent is any legitimate basis for a potentially criminal investigation. There should have been a preliminary inquiry by the IG to see if there was any basis for an investigation. That wasn't done. The original concerns expressed by Congresswoman Collins could have been handled much more routinely, in my view, through correspondence. That, too, wasn't done.

Mr. Chairman, in my mind, there is no room for doubt on three points: First, the two Secret Service agents were targeted by the administration for committing truth, because the truth conflicted with the White House cover story; second, the investigation was meant to chill the behavior of these two agents, and signal the same for others who would tell the truth about the FBI files matter; and third, once this little scheme was exposed, the schemers went scurrying for cover.

I suggest to this subcommittee, Mr. Chairman, two main questions to get to the bottom of things. One: Who put the IG up to this? Two: Did White House and/or Treasury officials have a role in the scheme?

My advice to the IG in this case boils down to two words: Back off.

Mr. Chairman, this issue before you today is a greater matter than even obstruction of justice. It's obstruction of the truth. And the agent of that obstruction is a law enforcement entity, which makes it all the more serious.

I want to make it clear that ours is not a partisan endeavor. I have a long record of speaking out about wrongdoing by administrations of Presidents in my own party. And I know the members of this subcommittee, on both sides of the aisle, view this inquiry as non-partisan. Because matters of right versus wrong, of truth versus cover-up, transcend party affiliation.

Once again, I'd like to commend your efforts to air the truth, Mr. Chairman. I look forward to working with you and your subcommittee to right this terrible wrong—to defend the two Secret Service agents who told the truth, and to hold accountable those who tried to silence them.

LETTER FROM SENATOR GRASSLEY

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 16, 1996.

Hon. ROBERT E. RUBIN,
Secretary, Department of the Treasury,
Washington, DC.

DEAR SECRETARY RUBIN: As Chairman of the Subcommittee on Administrative Oversight and the Courts, I recently requested and received from the United States

Secret Service a WAVES list dated August 1, 1993, entitled "Employer Listing—White House, NEOB and OEOB."

As part of my continuing effort to identify and understand various such lists produced by the Secret Service for the White House, I request that you allow Secret Service agents John Libonati and Jeffrey Undercoffer to come to my office and brief my staff on the significance of this list, and answer any questions.

Thank you, as always, for your continued cooperation with my on-going efforts. I would appreciate it if these two agents could be made available some time on October 17 or October 18.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

LETTER FROM SENATOR GRASSLEY

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 11, 1996.

Mr. WILLIAM H. PICKLE,
Executive Assistant to the Director, U.S. Secret Service,
Washington, DC.

DEAR MR. PICKLE: On October 1, Senate Judiciary Committee investigators deposed Mari Anderson, former Executive Assistant to White House Director of Personnel Security, Mr. Craig Livingstone.

In her deposition, Ms. Anderson referred to an active passholder list or lists with names that were crossed out because these individuals no longer worked at the White House.

It has come to my attention that you provided a copy of such a list to the House Committee on Government Reform and Oversight. As chairman of the Subcommittee on Administrative Oversight and the Courts, I request a copy of this list in the interest of furthering my on-going investigation into the FBI files matter.

Your cooperation is greatly appreciated, as always.

Sincerely,

CHARLES E. GRASSLEY,
U.S. Senator.

PREPARED STATEMENT

Senator KERREY. Mr. Chairman, I have one from Senator Mikulski.

Senator SHELBY. Senator Mikulski's statement will be included as part of the record. I understand that she has expressed great concern about this matter and unfortunately she could not be with us today.

Senator Kerrey, do you have any other requests?

Senator KERREY. I do not

[The statement follows:]

PREPARED STATEMENT OF SENATOR MIKULSKI

Mr. Chairman, Senator Kerrey, thank you for calling this hearing today. This hearing has been called to examine the circumstances surrounding a Treasury Department investigation of two career Special Agents with the United States Secret Service and testimony they gave to a Congressional Committee.

Mr. Chairman, I want you and Senator Kerrey to know I am very disturbed by this situation. I know the men and women of the Secret Service to be some of the most loyal and dedicated public servants I have ever known.

It came as quite a shock to discover that these agents have become the subject of a potential criminal investigation by the Treasury Department's Inspector General.

The careers and reputation of two outstanding Secret Service agents have been called into question. Our federal law enforcement agents put their life on the line every day to protect our citizens. In the case of the Secret Service, they literally put themselves in the line of fire.

The agents' testimony pertained to Secret Service procedures for granting access to the White House Their testimony focused solely on the process for granting access to the White House. By most accounts, their testimony was straightforward—explaining long established procedures used by the Secret Service.

If the testimony of a witness raises new issues or contradicts earlier testimony, then the first step should be to call back the witness and ask a series of follow-up questions to sort out the issues and explain the discrepancies. In this case, I do not understand why a potentially criminal investigation was launched by the Inspector General before these basic steps were taken.

If there is evidence of potential criminal conduct, then the Department of Justice should be called in to investigate, not the Inspector General of the Treasury Department.

Mr. Chairman, let me be clear, no member of Congress can or should intervene or influence any pending investigation by appropriate authorities.

However, when an agency or department takes action that appears to go beyond its mandate or takes action that differs from established procedures, Congress can and must exercise its oversight responsibility.

In addition, this Treasury Department investigation sets a very dangerous precedent. It says to our civil servants that whenever they testify before Congress, they better hire a lawyer.

It sends a chill down the spine of any official who is asked to testify. I cannot remember when career civil servants have been investigated for potentially criminal conduct based on routine testimony before Congress.

Until proven otherwise, I will believe that the agents in question have been, and will always be loyal, dedicated public servants who were doing their job.

LETTERS CONCERNING FBI FILES INVESTIGATION

Senator SHELBY. I am sure that there are going to be some others.

I would also in sequence like to be made part of the record, without objection: the letter from Senator Stevens to the inspector general; Congresswoman Cardiss Collins' letter, a copy of that, to the inspector general; and the letter that I quoted from at length today from the Secret Service written on behalf of the Director by William H. Pickle detailing the latest events.

[The letters follow:]

LETTER FROM SENATOR STEVENS

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC, June 18, 1996.

VALERIE LAU,
Inspector General, Department of the Treasury,
Washington, DC.

DEAR MS. LAU: As Chairman of the Senate Governmental Affairs Committee, I am concerned by recent allegations that individuals in the Clinton White House may have inappropriately handled FBI background investigation reports on personnel from prior Presidential administrations.

These allegations appear to describe not only possible violations of the Privacy Act, but also government policies as I understand them on handling sensitive materials. There have been statements made, at times conflicting, about what the administration's policies are with respect to these files, and under what circumstances they are to be released.

In my oversight capacity as Chairman, I hereby request that you investigate the following questions:

(1) For the period January 1993 through the present, what were the Secret Service and Treasury Department policies with respect to handling background investigation files on administration personnel, particularly on personnel from prior administrations who no longer worked for, or had access to, the White House?

(2) At any time during the Clinton Administration have Secret Service and Treasury Department policies and practices with respect to requests for background investigation files changed? If so, when and how?

(3) Under what circumstances would Secret Service background investigation files be turned over to the White House, and to whose office at the White House would the files be released?

(4) How many requests for Secret Service background investigation reports has the Secret Service and Treasury Department received from the Clinton White House, what were the names of the personnel who were the subjects of the requests, what was the stated purpose for the requests, and how were the requests handled?

(5) What were the names of any individuals in the Clinton White House known to have been involved in seeking, receiving, storing, transporting, or reviewing Secret Service background investigation reports, and in what context?

(6) What were the names of any Secret Service or Treasury Department personnel involved in authorizing, transmitting, or processing such requests from the Clinton White House?

(7) Did any Secret Service or Treasury Department personnel involved in authorizing, transmitting, or processing such requests from the Clinton White House at any time have concerns about the appropriateness of the requests? If so, did they raise these concerns with anyone, and how were they addressed?

(8) In your opinion, has the White House handling of background investigation files violated the privacy rights of the persons whose files were involved? If so, are there criminal violations of the Act?

(9) Allegations have been made that the Secret Service was the source of the list relied upon to collect the FBI background investigation files on prior administration personnel recently discovered at the White House. Did the Secret Service produce the list?

(10) Did anyone in the Clinton White House ever seek to compare the background file report information from prior administrations with that of the Clinton Administration in any way? If so, how was this comparison made, and how was it responded to?

Because the privacy rights of individuals and the security of sensitive government documents are involved, I would appreciate a response to this request as quickly as possible. Please keep Committee Counsel Doug Fuller, at (202) 224–8866, informed as to your progress. Thank you.

With best wishes,

Cordially,

TED STEVENS,
U.S. Senator.

LETTER FROM CONGRESSWOMAN COLLINS

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC, September 25, 1996.

Hon. ROBERT E. RUBIN,
Secretary, Department of the Treasury,
Washington, DC.

DEAR SECRETARY RUBIN: Yesterday I received a package of materials supplied by the Independent Counsel to the White House relating to the FBI files investigation. These were documents from the Office of Personnel Security turned over by the White House when the investigation began. One of the documents is a list prepared by the Secret Service in June, 1993, entitled, "WAVES Exclusive Employer Directory for White House Operations Personnel," that included many names of individuals no longer employed by the Administration, including John Sununu, Samuel Skinner, Sherrie Rollins, Bob Teeter, Margaret Tutweiler, and Robert Zoellick, as well as present Administration employees such as Jodie Torkelson, David Watkins, and George Stephanopoulos.

This list gives further credence to the explanation that the requests of Anthony Marceca for FBI files of former employees were the result of a mistake, based upon his use of outdated files. However, it raises a serious concern as to why its existence was not previously brought to the attention of this Committee by the Secret Service.

On June 26, 1996, I wrote to your General Counsel Edward Knight to request a briefing for the Committee's Minority staff by the Secret Service to discuss the nature of lists provided to the White House and any possible problems with accuracy. Mr. Knight never had the courtesy to respond.

On July 17, 1996, Secret Service officials John Libonati and Jeffrey Undercoffer testified under oath before this Committee that it was impossible for the Secret Service to have been responsible for the outdated lists used by Mr. Marceca. They

never described to the Committee Secret Service lists entitled "WAVES Exclusive Employer Directory for White House Operations Personnel." They also testified that any Secret Service list would clearly have distinguished between active and inactive passholders, even though the list provided by the Independent Counsel does not make such distinctions. The production of this Secret Service list now suggests that the testimony was erroneous.

In order to understand why this information was not provided to the Committee when requested, I therefore make two requests:

(1) That you provide an explanation on how the list was prepared, why the Committee was not informed of the existence of such a list, and the shortcomings of such a list. Because the Committee will file a report on the FBI files issue as early as Saturday, September 28, I request that these answers be provided no later than 1:00 p.m., Friday, September 27; and

(2) That you direct the Inspector General of the Department to investigate the preparation of the testimony before this committee by Secret Service officials to determine how and why the testimony was developed that led to the conclusion that it was impossible for the Secret Service to provide lists with outdated names. If the Inspector General would like to review the transcript of the July 17, 1996, hearing, please have his office contact Minority staff at 225–5051.

Sincerely,

CARDISS COLLINS,
Ranking Minority Member.

LETTER FROM WILLIAM H. PICKLE, EXECUTIVE ASSISTANT TO THE DIRECTOR (CONGRESSIONAL AFFAIRS)

DEPARTMENT OF THE TREASURY,
U.S. SECRET SERVICE,
November 27, 1996.

Hon. RICHARD C. SHELBY,
Chairman, Subcommittee on Treasury, Postal Service, and General Government, U.S. Senate, Washington, DC.

DEAR CHAIRMAN SHELBY: This is in response to your letter of November 26, 1996, asking that the Secret Service appear before the Subcommittee to answer questions about the Treasury Inspector General's investigation into the congressional testimony of two career Secret Service agents, and asking for a chronology of events concerning the investigation. As you requested, a copy of Treasury Directive 40–01, Responsibilities of and to the Inspector General, is enclosed.

Given what has already transpired in this matter and given that, as is set out below, the Secret Service does not know exactly what the Treasury Inspector General is investigating, we do not feel at this time that it would be appropriate for Secret Service representatives to give testimony concerning the Treasury Inspector General's investigation. We can, however, provide the following chronology of events:

—On October 16, 1996, Senator Charles Grassley wrote to Treasury Secretary Robert E. Rubin requesting that Secret Service Special Agents John Libonati and Jeffrey Undercoffer answer certain questions concerning an August 1, 1993 WAVES computer list relevant to the FBI Background Files Case. These criminal investigators constitute two of the Secret Service Agents serving as agency contacts in connection with Congressional inquiries involving the FBI Background Files Case.

—Senator Grassley's request followed a September 25, 1996 letter to Secretary Rubin from Representative Cardiss Collins regarding a June 1993 Secret Service WAVES computer list also relevant to the FBI Background Files Case. In naming Secret Service Special Agents Libonati and Undercoffer specifically, it appeared that Representative Collins was requesting that the Treasury Inspector General investigate the preparation of testimony before her Committee by these Secret Service Agents on the grounds their testimony was erroneous.

—Since involvement by Special Agents Libonati and Undercoffer in responding to Senator Grassley's October 16 request might be problematical in light of Representative Collins' letter, the Secret Service's Chief Counsel, John Kelleher, contacted Ms. Lori Y. Vassar, Counsel to the Treasury Inspector General, on Friday, October 18, 1996. On that date it was confirmed that the Treasury Inspector General was pursuing an investigation regarding Special Agents Libonati and Undercoffer based upon two referrals: (1) Representative Collins'

September 25 letter; and (2) a June 18, 1996 letter from Senator Ted Stevens to Inspector General Valerie Lau.

—As a consequence, on October 18, 1996, the Secret Service first became aware that a Treasury Inspector General investigation involving its agents had been opened based upon these Congressional letters. Senator Stevens' letter had not been brought previously to our attention by the Treasury Inspector General.

—On Monday, October 21, 1996, Inspector General Lau requested a meeting with Secret Service officials to discuss the pending investigation. Assistant Director for Inspection K. David Holmes and Chief Counsel John Kelleher attended on behalf of the Secret Service. Treasury Inspector General Lau, Counsel Vassar, Deputy Inspector General Richard B. Calahan and Regional Inspector General for Investigations Emily Coleman met with these Secret Service representatives. At this meeting the Secret Service was again advised that there was an active investigation of Special Agents Libonati and Undercoffer, and, further, that this matter was potentially a criminal investigation. The Office of Inspector General representatives would not divulge with any specificity precisely what these agents were alleged to have done wrong, or what exactly the Treasury Inspector General would be investigating. The Secret Service still has not received any such information.

Sincerely,

WILLIAM H. PICKLE.

NONDEPARTMENTAL WITNESSES

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

STATEMENT OF RICHARD J. GALLO, NATIONAL PRESIDENT

INTRODUCTION OF WITNESSES

Senator SHELBY. First we will hear from Richard Gallo, President of the National Federal Law Enforcement Officers Association [FLEOA], and James O. Pasco, the Executive Director of the Fraternal Order of Police. Both of these organizations have raised significant questions here.

Gentlemen, welcome to the subcommittee. Your written statement in its totality will be made part of the record. Mr. Gallo, we will start with you. If you want to sum up your testimony, you may proceed as you wish.

Mr. GALLO. Thank you, Mr. Chairman.

My name is Richard Gallo. I am presently employed as a Senior Special Agent for the U.S. Department of Agriculture's Inspector General's Office. I am myself an inspector general agent. I have been employed by the USDA Office of Inspector General as a criminal investigator for over 12 years.

I also serve as the President of the Federal Law Enforcement Officers Association, which is a voluntary nonpartisan professional association representing approximately 12,000 Federal law enforcement officers and special agents from over 51 agencies of the Federal Government. These agencies include the U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms; the Internal Revenue Service Criminal Investigations and Inspection Division; the Drug Enforcement Administration; Federal Bureau of Investigation; Immigration and Naturalization Service; U.S. Marshal Service; Postal Inspection Service; Naval Criminal Investigative Service; the Bureau of Diplomatic Security in the State Department; U.S. Park Police, DOI; the Bureau of Land Management, Special Agents and Rangers; Defense Criminal Investigative Service; and the Offices of Inspectors General at the following departments: Agency of International Development, Agriculture, Commerce, Defense, Education, Energy, Environmental Protection Administration, Federal Aviation Administration, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Accounting Office, General Services Administration, Health and Human Services, Social Security Administration, Housing and Urban Development, Interior, Justice, Labor, and also the Treasury Department.

It is a privilege for me to come before the subcommittee on behalf of FLEOA. On behalf of the men and women of FLEOA, I want to express our concern regarding the Treasury Inspector General investigation of Secret Service Special Agents John Libonati and Jeffrey Undercoffer.

It is our understanding that notification has been given by the Treasury Inspector General that two career law enforcement civil servants are being investigated by the inspector general and that it is related to their having previously testified before Congress. It has been in the media that the Treasury Inspector General stated to the Secret Service that the investigation is potentially criminal in nature. If the news reports are half true, they are very disturbing.

Our greatest concerns are twofold: the chilling effect such an investigation would have on Federal employees in the future who are requested to come before Congress to testify, and also the reputations of the two career law enforcement employees being investigated. We believe that Congress has the right, the obligation, and the responsibility to have Government employees give testimony before it on matters that Congress deems necessary. Federal employees testifying before Congress should not do so under the fear of reprisal or investigation as a result of their appearing before Congress. Congress must be assured that Federal employees testifying before it are giving full and accurate answers to the questions being presented to them.

FLEOA considers an investigation of Government employees by an inspector general a serious matter. Again, I am an inspector general agent. In many cases, an open inspector general investigation results in the employee's inability to request a transfer or promotion and could endanger the employee's security clearance.

Due to the fact that an employee is being investigated by the Government, the employee cannot be legally represented by his or her agency. In the case of Special Agents Libonati and Undercoffer, they are representing their agency before Congress and today have the full support of their agency. Nevertheless, the Secret Service is prohibited from providing them with legal counsel and they must now seek private counsel at great personal cost to represent them regarding the Treasury Inspector General investigation. This is no way to treat two dedicated career Federal law enforcement officers.

FLEOA has known and worked with Special Agent John Libonati for a number of years during his tenure on Capitol Hill. We consider his integrity and ethics beyond reproach. He is respected by both Democrats and Republicans alike for his hard work and dedication to duty.

In closing, FLEOA respectfully requests that this committee conduct a full and open investigation as to how and why the Treasury Inspector General opened an investigation or preliminary inquiry of Secret Service Agents John Libonati and Jeffrey Undercoffer. Congress must send a clear message that Federal employees, when testifying before Congress, must not hold back the truth for fear of retaliatory investigations. Congress must not allow Federal employees to be used as a scapegoat for speaking the truth on Capitol Hill.

I am willing to answer any questions from the Senators.

PREPARED STATEMENT

Senator SHELBY. Thank you, Mr. Gallo. We have your complete statement, and it will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF RICHARD J. GALLO

Chairman Shelby, Members of the Subcommittee, Ladies and Gentlemen: My name is Richard Gallo. I am presently employed as a Senior Special Agent for the United States Department of Agriculture's Office of Inspector General. I have been employed by the USDA–OIG as a criminal investigator for over twelve years. I also serve as the President of the Federal Law Enforcement Officers Association (FLEOA), which is a voluntary non-partisan professional association representing approximately 12,000 Federal law enforcement officers and special agents from over fifty-one agencies of the Federal Government. These include the U.S. Secret Service; Bureau of Alcohol, Tobacco and Firearms; Internal Revenue Service—Criminal Investigations and Inspection; Drug Enforcement Administration; Federal Bureau of Investigation; Immigration and Naturalization Service; U.S. Marshals Service; Postal Inspection Service; Naval Criminal Investigative Service; the Bureau of Diplomatic Security in the State Department; U.S. Park Police—DOI; Bureau of Land Management—Special Agents and Rangers; Defense Criminal Investigative Service and the Offices of Inspector General at the following departments: Agency of International Development, Agriculture, Commerce, Defense, Education, Energy, Environmental Protection Administration, Federal Aviation Administration, Federal Deposit Insurance Corporation, Federal Emergency Management Agency, General Accounting Office, General Services Administration, Health and Human Services, Social Security Administration, Housing and Urban Development, Interior, Justice, Labor and Treasury.

It is a privilege for me to come before the Subcommittee on behalf of FLEOA. On behalf of the men and women of FLEOA I want to express our concern regarding the Treasury OIG investigation of Secret Service Special Agents John Libonati and Jeffrey Undercoffer. It is our understanding that notification has been given by the Treasury OIG that two career law enforcement civil servants are being investigated by the IG, and, that it is related to their having previously testified before Congress. It has been reported by the media that the Treasury OIG stated to the Secret Service that the investigation is "potentially criminal" in nature. If the news reports are half true, they are very disturbing.

Our greatest concerns are twofold: 1) the chilling effect such an investigation will have on Federal employees in the future who are requested to testify before Congress and, 2) the reputations of the two career law enforcement employees being investigated. We believe that Congress has the right, the obligation and the responsibility to have government employees give testimony before it on matters that Congress deems necessary. Federal employees testifying before Congress should not do so under the fear of reprisal or investigation as a result of their appearing before Congress. Congress must be assured that Federal employees testifying before it are giving full and accurate answers to the questions being presented.

FLEOA considers an investigation of government employees by an OIG a serious matter. In many cases an open OIG investigation results in the employee's inability to request a transfer, promotion and could endanger the employee's security clearance.

Due to the fact that an employee is being investigated by the government, the employee cannot be legally represented by his or her agency. In the case of Special Agents Libonati and Undercoffer they were representing their agency before Congress and today have the full support of their agency. Nevertheless, the Secret Service is prohibited from providing them with legal counsel and they must now seek private counsel, at great personal cost, to represent them regarding the Treasury OIG investigation. This is no way to treat dedicated career Federal law enforcement officers.

FLEOA has known and worked with Special Agent John Libonati for a number of years during his tenure on Capitol Hill. We consider his integrity and ethics beyond reproach. He is respected by both Democrats and Republicans alike for his hard work and dedication to duty.

In closing, FLEOA respectfully requests that this Committee conduct a full and open investigation as to how and why the Treasury OIG opened an investigation or preliminary inquiry of Secret Service Special Agents Libonati and Undercoffer. Congress must send a clear message that: Federal employees, when testifying before Congress, must not hold back the truth for fear of retaliatory investigations. Congress must not allow Federal employees to be used as scapegoats for speaking the truth on Capitol Hill.

National Fraternal Order of Police

STATEMENT OF JAMES O. PASCO, JR., EXECUTIVE DIRECTOR

Senator SHELBY. Mr. Pasco.

Mr. PASCO. Thank you, Mr. Chairman.

The Fraternal Order of Police has more than 277,000 enforcement officers in its ranks, approximately 25,000 of whom are Federal officers.

As an organization of law enforcement professionals, the FOP is very concerned with the events that have led to the investigation of Secret Service Special Agents John Libonati and Jeffrey Undercoffer by the inspector general. It appears to us that these two men, both with excellent records at the Secret Service, have been targeted for simply telling the truth. They corrected erroneous reports that the FBI personnel files provided to the White House were derived from an outdated list of White House employees. They showed that such a list could not have been generated by the Secret Service. As a result, these two men face an investigation which serves no obvious legitimate purpose.

If there is anything, it seems to us, that needs to be investigated, it is the events that led the ranking member of the House Government Reform and Oversight Committee to develop a basis and follow up with a request for this investigation by the inspector general.

The investigation of Special Agents Libonati and Undercoffer is abhorrent to the tradition of political independence in law enforcement. The chilling effect that this misdirected investigation will have on all law enforcement personnel defies description. The message appears to be that Federal officers who cooperate and give accurate testimony before a Government body may be the targets of retaliatory and unwarranted Government investigations as a result of that truthful testimony. It has always been our understanding that the primary function of an inspector general is to ferret out waste, fraud, and abuse, and we would suggest that there is plenty of potential in that mission without engaging in witch hunts.

Secretary Rubin and Under Secretary Kelly have provided tremendous leadership and support to Treasury's law enforcement components. It is frustrating to us that the inspector general, whose office was created to provide independence from political pressure, among other reasons, seems to be a victim of just that kind of pressure.

The National Fraternal Order of Police has always been supportive of Federal law enforcement and its agents. We believe very strongly that the investigation of Special Agents Libonati and Undercoffer should end because the allegations against them are at best specious and certainly unfounded. We want agents and officers to be free to do their work free of political pressures or considerations, without fear of retribution for giving accurate, factual testimony before Congress.

We are joined in this concern not only by FLEOA as represented by President Gallo, but also by the International Brotherhood of Police Officers, and Chris Donnell and their executive director called me just before I left to come to this hearing and asked that

we express their very strong concerns and reservations about this investigation.

Thank you very much, Senators, and I will be happy to answer any questions you may have.

PREPARED STATEMENT

Senator SHELBY. Thank you, Mr. Pasco. We have your complete statement, and it will be made part of the record.

[The statement follows:]

PREPARED STATEMENT OF JAMES O. PASCO, JR.

We appreciate the opportunity to testify on this very important issue, and we thank you, Chairman Shelby for holding this hearing.

The Fraternal Order of Police has more than 277,000 law enforcement officers in its ranks, approximately 25,000 of whom are Federal officers. As an organization of law enforcement professionals, the Fraternal Order of Police is very concerned with the events that have led to the investigation of Secret Service Special Agents John Libonati and Jeffrey Undercoffer by the Inspector General at the Department of the Treasury. It appears to us that these two men, both with excellent records at the Secret Service, have been targeted for simply telling the truth. They corrected erroneous reports that the FBI personnel files provided to the White House were derived from an outdated list of White House employees, and showed that such a list could not have been generated by the Secret Service. As a result, these two men face an investigation which serves no legitimate purpose.

If there is anything that needs to be investigated, it is the events that led the Ranking Member of the House Government Reform and Oversight Committee to develop the basis and request for this investigation by the Treasury's Inspector General. Special Agents Libonati and Undercoffer, who, as designated experts, provided accurate testimony as to the veracity of the outdated list at the center of the file controversy find themselves the subject of an investigation.

The investigation of Special Agents Libonati and Undercoffer is abhorrent to the tradition of political independence in law enforcement. The chilling effect that this misdirected investigation will have on all law enforcement personnel defies description. The message appears to be that Federal officers who cooperate and give accurate testimony before a government body may be the targets of retaliatory and unwarranted government investigations as a result of that testimony. It has always been our understanding that the primary function of an inspector general is to ferret out waste, fraud, and abuse, and we would suggest that there is plenty of potential in that mission, without engaging in witch hunts.

We believe that Secretary Rubin and Undersecretary Kelly have provided tremendous leadership and support to Treasury's law enforcement component. It is frustrating to us that the Inspector General, whose office was created to provide independence from political pressure, seems to be a victim of that pressure.

The National Fraternal Order of Police has always been supportive of Federal law enforcement and its agents. We believe very strongly that the investigation of Special Agents Libonati and Undercoffer should end because the allegations against them are specious and unfounded. We want agents and officers to be free to do their work free of political pressures or considerations, without fear of retribution for giving accurate, factual testimony before Congress.

Thank you, Senators. I will now answer any questions you might have.

GENERAL QUESTIONS

Senator SHELBY. I will ask this first question to both of you, but I will start with Mr. Gallo.

How long have you been with the Fraternal Order of Police, Mr. Gallo?

Mr. GALLO. Sir, I am not a member of the Fraternal Order of Police.

Mr. PASCO. But he should be.

Senator SHELBY. You are with the National Law Enforcement Officers Association.

How long have you been, Mr. Pasco?

Mr. PASCO. I have been a member of the Fraternal Order of Police for about 17 years.

Senator SHELBY. What did you do before that?

Mr. PASCO. I was 25 years with the Bureau of Alcohol, Tobacco and Firearms.

Senator SHELBY. ATF?

Mr. PASCO. Right. And retired after having served as Assistant Director for Congressional Affairs for about the last 12 years I was there.

Senator SHELBY. Mr. Gallo, what did you do before you came with the National Law Enforcement Officers Association?

Mr. GALLO. I still am employed as a Senior Special Agent with the Department of Agriculture, Inspector General's Office.

Senator SHELBY. And this is what agency?

Mr. GALLO. The Department of Agriculture.

Senator SHELBY. In your experience, Mr. Gallo, working in the Inspector General's Office and so forth, have you ever heard of an investigation—ever heard of an investigation—being conducted into congressional testimony of career law enforcement agents?

Mr. GALLO. No, sir; I have not.

Senator SHELBY. Have you, Mr. Pasco?

Mr. PASCO. Never.

Senator SHELBY. I have a copy of a letter from your national president which I will make part of the record.

[The letter follows:]

LETTER FROM GILBERT G. GALLEGOS, NATIONAL PRESIDENT

FRATERNAL ORDER OF POLICE,
NATIONAL LEGISLATIVE PROGRAM,
Washington, DC, October 31, 1996.

Hon. ROBERT RUBIN,
Secretary, Department of the Treasury,
Washington, DC.

DEAR MR. SECRETARY: We are deeply concerned over the sequence of events that has led to the "potentially criminal" investigation of Secret Service Special Agents John Libonati and Jeffrey Undercoffer by the Department of the Treasury's inspector general. After reviewing the agents' testimonies and the actions of House and Senate committee members, Agents Libonati and Undercoffer are apparently being investigated for simply telling the truth. Agents Libonati and Undercoffer contradicted claims that FBI files provided to the White House were derived from an outdated list of White House employees supplied by the Secret Service. For their testimony, they now face what may be an investigation based on retribution.

It has been alleged that White House attorneys have colluded with the House Government Reform and Oversight Committee's ranking member, Cardiss Collins, to fabricate the basis and request for this investigation by the Treasury's inspector general, Valerie Lau. If anything needs investigating, it is that possibility. Instead, Special Agents Libonati and Undercoffer, who, as designated experts, provided accurate testimony as to the veracity of an outdated Secret Service list being the center of the file controversy find themselves the subjects of an investigation.

The actions of Inspector General Lau are abhorrent to the tradition of political independence in law enforcement and an affront to all who serve. Words cannot express to you the chilling effect that this misdirected investigation will have for law enforcement personnel—the message will be that Federal officers are subject to unwarranted government investigations for accurate testimony before a government body. It has always been our understanding that the primary function of an inspector general is to ferret out waste, fraud, and abuse, not participate in it.

The National Fraternal Order of Police appreciates your strong personal support for law enforcement and the Department of the Treasury's law enforcement component. We look forward to your continued support; however, we also look forward to

the cessation of unfounded government investigations involving law enforcement personnel. We want agents and officers who are free to do their work without the hindrance of political pressures. Therefore, we respectfully ask for your assistance in looking into the motivation and validity of the Department of the Treasury's investigation of Agents Libonati and Undercoffer. I look forward to hearing from you.

Sincerely,

GILBERT G. GALLEGOS.

FLEOA'S CONCERN WITH INSPECTOR GENERAL'S INVESTIGATION

Senator SHELBY. Why did reports of the inspector general's investigation give your organizations such cause for concern?

Mr. GALLO. The chilling effect, Senator.

Senator SHELBY. That you related.

Mr. GALLO. Exactly. That is our greatest concern. If a career law enforcement officer is assigned by his or her agency to give testimony before Congress and delivers that testimony and answers the questions of the committee, as far as their expertise is concerned in a particular area, they should——

Senator SHELBY. And if people do not like their testimony, do you believe it is a form of retribution?

Mr. GALLO. If people do not like the information they have provided and——

Senator SHELBY. Do they just launch an investigation?

Mr. GALLO. And thus request an investigation based on that, yes.

Senator SHELBY. What will that do to people who have been trained and sworn to tell the truth and go to Congress? Will it not have, as you use the phrase, a chilling effect? Will they not think twice before coming before up here?

Mr. GALLO. One of the examples may be in fact in front of you with the letter from the Secret Service today that you had read into the record before.

Senator SHELBY. Mr. Pasco, have you ever heard of an inspector general investigating career law enforcement officers for representing their agency before Congress yourself?

Mr. PASCO. No, sir; I have not, and that is why from our standpoint, while we are very sympathetic to the plight of Agents Libonati and Undercoffer—and I too am personally acquainted with Special Agent Libonati and cannot believe he did ever do anything improper—that the issue transcends their dilemma because again of the chilling effect. It is certainly not an overworked term. It is exactly the way we see things going.

PROTECTION FROM POTENTIAL REPRISALS

Senator SHELBY. To both of you, how do career law enforcement officers—Secret Service, FBI, you name it—protect themselves from the potential of the reprisals when they are asked to give testimony before Congress and then the testimony is not liked in their agency that they give, although they are sworn, I am sure, to tell the truth and do tell the truth?

Mr. PASCO. Their only defense is to tell the truth. Ironically in this case, it looks like they told the truth and it was not a defense against reprisal or retribution.

Senator SHELBY. If one of your members, to either one of you gentlemen, came to you for advice on what to do if they were being required as part of their duties to testify before Congress on behalf

of their agency on a very politically sensitive matter, what would you tell them?

Mr. GALLO. Tell the truth.

Senator SHELBY. Tell the truth.

Mr. PASCO. And get a lawyer.

Senator SHELBY. And to get a lawyer.

But before now, you would not have told them to get a lawyer, would you? Just tell the truth.

Mr. PASCO. No, right.

Senator SHELBY. Mr. Pasco, your organization sent a letter to Secretary Rubin over at the Treasury on October 31. What response, if any, did your organization receive to that letter?

Mr. PASCO. We have not yet had a written response. We have had conversations with staff over there in the sense that they acknowledge receipt of the letter and they are going to get back to us with a response.

Senator SHELBY. Senator Kerrey.

Senator KERREY. Mr. Gallo, let me ask you. You are an inspector general with the Department of Agriculture. Would you feel the same way if, let's say, a couple of Department of Agriculture employees got caught up in an investigation and were asked by Congress to come testify—let's say, an independent counsel's investigation of Secretary Espy—and then got embroiled in it and then got caught up with the inspector general's evaluation?

Is your concern specific to law enforcement, or is it more generally felt about all Federal employees?

Mr. GALLO. I am concerned about my members, Senator.

Senator KERREY. Your members?

Mr. GALLO. My members being Federal law enforcement agents.

Senator KERREY. So, you would not have a similar concern if this was an employee of the Department of Agriculture, the Internal Revenue Service, or some other agency.

Mr. GALLO. If they were a Federal law enforcement officer, yes, sir.

Senator KERREY. No, sir; I am asking you——

Mr. GALLO. Then, no, sir.

Senator KERREY. You would not. So, you think Federal law enforcement officials should be given some special consideration that other Federal employees do not have.

Mr. GALLO. No, sir; just that I would not be here representing them.

Senator KERREY. OK.

Let me ask it just straight out. You can imagine a situation where a Department of Agriculture employee, let's say, during the time when there was an independent counsel investigating Secretary Espy, gets called before an agriculture committee and gets pulled into the investigation as a consequence.

Understand that these two men are not being—you heard my opening testimony.

Mr. GALLO. Yes, sir.

Senator KERREY. I have got real serious questions as to why this investigation is proceeding on its own.

But these two men are not being investigated independent of the earlier investigation that was going on over the removal of these files.

So, if I have a Department of Agriculture employee that comes before a House or a Senate committee and brings testimony about the Secretary Espy case, let's say, and then gets pulled into that investigation, would you say that was an unreasonable thing to have happen?

Mr. GALLO. If that employee brought forth the truth as represented by their agency and is being investigated just for bringing that statement forth——

Senator KERREY. Would you say then, sir, that one good way to be removed of an opportunity to be investigated by the Inspector General's Office is to come before Congress and testify?

Mr. GALLO. Oh, no, definitely not, sir.

Senator KERREY. Well, then do you think it would have been appropriate for the Inspector General's Office to interview Secret Service agents and to investigate Secret Service agents had they not testified before Congress?

Mr. GALLO. I am not quite sure I understand your question, sir.

Senator KERREY. Well, let us say these two gentlemen had not testified before Congress and the Inspector General's Office then calls them in and says, we want to ask you some questions. You are now part of this investigation. Is that appropriate or not?

Mr. GALLO. That would be appropriate. If they had something to do with this, I imagine then it would be appropriate.

Senator KERREY. So, it is not the investigation that bothers you. What you are concerned about is the fact that they testified, and then after the testimony, they became a part of the investigation.

Mr. GALLO. Yes, sir.

Senator KERREY. Would you say, therefore, that one way to inoculate yourself against being a part of an inspector general's investigation is to come before Congress and testify?

Mr. GALLO. No, sir.

Senator KERREY. Well, would not that produce just as a chilling effect——

Mr. GALLO. It is our understanding that these——

Senator KERREY. Both you gentlemen said that it has produced a chilling effect to have somebody come up before Congress and testify, that they are now a part of the overall investigation of this removal of the files. The question I am concerned about is, first of all—and you have answered it no. You say you would feel this concern whether they worked for any agency. They do not have to be law enforcement officials.

My concern is, if you understand the question, if I have got somebody who is under investigation—as you know, in an inspector general's report calling them under investigation is not the same thing as being under investigation by the police department or county attorney. This potentially criminal has been construed as a consequence of the statement that was made to these two gentlemen when they are asking, do I rule out criminal, and the answer is, no do not rule out criminal. It makes its way into the press. It makes its way now into a couple of letters. The inspector general has never said publicly that they were under a potentially criminal

investigation. They are a part of an overall investigation and they are being advised not to rule out potentially criminal charges. There is a substantial difference, is there not?

Mr. GALLO. As an inspector general agent, if somebody is facing a criminal investigation, you have to give them their Miranda rights. If they are not facing a criminal investigation, you give them a second set of rights, thus forcing them to talk. In effect, if they do not talk to you, that in itself is an offense that is subject to removal. So, in other words, as a criminal investigator for the Department of Agriculture Inspector General's Office, you have to let them know if it is criminal or if it is not because there are two ways to go. And with counsel for the inspector general, you make that decision and with the appropriate AUSA.

Senator KERREY. Let me go off on that one.

Let me finish up the first line of questioning, which is——

Mr. GALLO. Yes, sir.

Senator KERREY. If you as an inspector general are conducting an investigation of the Department of Agriculture and as a consequence of things that you have initiated on your own or that Congress has initiated—you have initiated as a consequence of an inquiry that has been made by Congress and you are investigating and you are looking at a series of individuals and things that they did and you are taking interrogatories—I do not know exactly how you do it, but I presume that you do interviews and you do a full-scale investigation to determine what actually went on.

Let us say you are looking at Mr. Jones and you have interviewed Mr. Jones and now Mr. Jones goes before Congress and offers testimony. Or let us say that you are not investigating them but they go before Congress and after the fact you say maybe I should include them in the investigation. Does that send a chilling effect?

Do you understand? The potential is that an individual could basically inoculate themselves by looking for an opportunity to go before Congress.

Mr. GALLO. I do understand the Senator's concerns on this issue, and it is a valid concern. It is our understanding that this does not apply to this particular case.

As far as what the Department of Agriculture Inspector General's Office does as far as congressional inquiries, I am not allowed to represent the Department of Agriculture here in what they do. I am representing FLEOA.

Senator KERREY. You say a chilling effect. Congress should not feel constrained to call a witness here as a consequence of saying, well, gee, if I call him up and testify, I may be violating or making more difficult your work as an inspector general. Do you see what I am saying?

Mr. GALLO. Yes, sir.

Senator KERREY. I could bring a witness up here and then make it difficult for you to all that witness.

Mr. GALLO. Correct.

Senator KERREY. If what you are saying is the case, we are sending a chilling effect, it creates a chilling effect as a consequence of the testimony.

Mr. GALLO. Yes, sir.

Senator SHELBY. Is it not true that the overall investigation regarding the FBI files is being conducted by the independent counsel?

Mr. GALLO. As far as——

Senator SHELBY. That is your understanding.

Mr. PASCO. That is my understanding.

Senator SHELBY. Gentlemen, we appreciate your testimony. We might have some further questions for the record, and we will submit those to you. Thank you.

Mr. PASCO. Thank you very much.

Mr. GALLO. Thank you, Senator.

DEPARTMENT OF THE TREASURY

STATEMENT OF VALERIE LAU, INSPECTOR GENERAL

ACCOMPANIED BY EMILY COLEMAN, REGIONAL INSPECTOR GENERAL, INVESTIGATIONS

INTRODUCTION OF WITNESS

Senator SHELBY. Our next panel will be Ms. Valerie Lau, Inspector General, the Department of the Treasury. Ms. Lau, you can bring anyone else up to the table that you so desire. Your written statement will be made part of the record in its entirety, and you may proceed as you so desire.

Ms. LAU. Thank you. Senator Shelby, members of the subcommittee, thank you for the opportunity to clarify the facts relating to the initiation of our investigation in response to two congressional requests.

I would like to begin by emphasizing that it is my office's general policy not to discuss open investigations. In this instance, it seems that it is general knowledge that we do have an open investigation. Indeed, our investigation has been the subject of much speculation and misinterpretation. This is troubling to my office, particularly since our investigation at this point has been limited to very preliminary activity.

I have three key points I would like to make today.

First, the purpose of our investigation, to the extent allowed by the Office of Independent Counsel, is a factfinding investigation to answer the questions posed by Senator Stevens as chairman of the Senate Governmental Affairs Committee and Congresswoman Collins as ranking minority member of the House Committee on Government Reform and Oversight.

In June, well before any hearings on this matter, Chairman Stevens requested an investigation of 10 specific questions generally pertaining to Treasury policies and practices regarding background investigation files and the production of the list used to request those files.

In September, Congresswoman Collins' letter to Secretary Rubin requested an investigation of the preparation of the testimony of Secret Service officials before the House Committee on Government Reform and Oversight. That testimony involved the process by which the White House access list is maintained and updated.

Second, we did not open this investigation until we were assured by the Office of Independent Counsel that doing so would not impede its investigation. My office notified the Office of Independent Counsel immediately after receiving each congressional request. Initially the Office of Independent Counsel indicated a strong preference that we not initiate any investigation or proceedings into the matter. After the second request, the Office of Independent Counsel informed us that we could proceed with both requests but

under very strict limitations. After confirmation from staff of both requesters of a continued desire for an investigation, we did open an investigation. Because both requests addressed issues related to the preparation of lists relied upon to request background investigation files, the two requests were opened as one investigation.

Last of all, under the Inspector General Act, it is my office's responsibility and my duty to conduct our work in an independent and objective manner. My staff and I take this responsibility very seriously.

That ends my prepared statement.

SENATOR STEVENS' 10 SPECIFIC QUESTIONS

Senator SHELBY. Let us go back into the first letter in June, the June letter from Senator Stevens. Do you have a copy of that letter?

Ms. LAU. Yes, sir, I do.

Senator SHELBY. What did Senator Stevens ask you to do? You mentioned 10 items. What were those 10? Could you just roll them off?

Ms. LAU. Certainly. There are 10 specific questions. Would you care for me to read those?

Senator SHELBY. Sure, go ahead, for the record.

Ms. LAU [reading].

In my oversight capacity as chairman, I hereby request that you investigate the following questions:

Number one, For the period January 1993 through the present, what were the Secret Service and Treasury Department policies with respect to handling background investigation files on administration personnel, particularly on personnel from prior administrations who no longer worked for, or had access to, the White House?

Item two, At any time during the Clinton administration have Secret Service and Treasury Department policies and practices with respect to requests for background investigation files changed? If so, when and how?

Item three, Under what circumstances would Secret Service background investigation files be turned over to the White House, and to whose office at the White House would the files be released?

Item four, How many requests for Secret Service background investigation reports has the Secret Service and Treasury Department received from the Clinton White House, what were the names of the personnel who were the subjects of the requests, what was the stated purpose for the requests, and how were the requests handled?

Item five, What were the names of any individuals in the Clinton White House known to have been involved in seeking, receiving, storing, transporting, or reviewing Secret Service background investigation reports, and in what context?

Item six, What were the names of any Secret Service or Treasury Department personnel involved in authorizing, transmitting, or processing such requests from the Clinton White House?

Item seven, Did any Secret Service or Treasury Department personnel involved in authorizing, transmitting, or processing such requests from the Clinton White House at any time have concerns about the appropriateness of the requests? If so, did they raise these concerns with anyone, and how were they addressed?

Item eight, In your opinion, has the White House handling of background investigation files violated the privacy rights of the persons whose files were involved? If so, are there criminal violations of the Act?

Item nine, Allegations have been made that the Secret Service was the source of the list relied upon to collect the FBI background investigation files on prior administration personnel recently discovered at the White House. Did the Secret Service produce the list?

Item 10, Did anyone in the Clinton White House ever seek to compare the background file report information from prior administrations with that of the Clinton administration in any way? If so, how was this comparison made, and how was it responded to?

Those were the 10 specific questions——

Senator SHELBY. This is in the letter of June 18, 1996, from Chairman Stevens of the Committee on Governmental Affairs to you.

Ms LAU. Yes.

SENATOR STEVENS' SECOND LETTER

Senator SHELBY. Now, there was a second letter—I believe you are familiar with that—from Senator Stevens. It was dated October 24, 1996. Do you have that letter?

Ms. LAU. Yes, sir; I do, if you will give me a moment.

Senator SHELBY. You take your time.

Ms. LAU. Thank you.

Yes, sir; I have that letter.

Senator SHELBY. Would you share that letter with us?

Ms. LAU. Would you care for me to read it into the record?

Senator SHELBY. I wish you would.

Ms. LAU. All right.

Senator SHELBY. I think it is important you read this and then later your letter.

Ms. LAU. All right. I would be happy to.

Senator SHELBY. This is the second letter from Senator Stevens to you.

Ms. LAU. Correct, dated October 24, 1996.

DEAR MS. LAU: I have been informed that your office has represented to the Secret Service and the Office of Senator Charles Grassley that two Secret Service agents, Jeffrey Undercoffer and John Libonati, are the subjects of an investigation into the testimony they presented to Congress in July of this year, that the investigation is "potentially criminal" in nature and that it was requested by me, along with Congresswoman Cardiss Collins. I would like your help in clarifying this matter.

As you are aware, I never requested any investigation into these two career civil servants. My June 18 letter requesting an investigation into the handling of background investigation files in no way referenced these individuals or their testimony. Please note that the testimony in question came a full month after my letter to you, so it could not possibly have been the subject of my request. My letter asked questions about the preparation and disposition of background investigation reports and the lists relied upon to collect the files, not the future testimony of Secret Service spokesmen.

It is important that Congress have unfettered access to information from a wide variety of sources, including testimony from administration spokespersons. Absence evidence that their congressional testimony has been inaccurate, let alone intentionally so, it is both inappropriate and counterproductive to indicate that witnesses are the subject of a potentially criminal investigation based on their testimony. I fear this will have a chilling effect on people's willingness to testify openly before Congress.

I would like it made very clear that I had nothing to do with this request. I hereby request by close of business today a statement from you personally stating that I have had nothing to do with requesting any investigation of these two individuals. If either Congresswoman Collins or the Office of the Inspector General wants to investigate civil servants for testifying to Congress, please leave my name out of it.

With best wishes.

INSPECTOR GENERAL LAU'S RESPONSE TO SENATOR STEVENS

Senator SHELBY. Now, did you respond to Senator Stevens' letter on the same date per his request?

Ms. LAU. Yes, sir; I did.

Senator SHELBY. And do you have a copy of the letter that you sent Senator Stevens that we have up here?

Ms. LAU. I do have a copy and I would like to have the opportunity to read that also into the record.

Senator SHELBY. You may proceed.

Ms. LAU. Thank you.

This letter is from me to Senator Stevens, dated October 24, 1996.

DEAR CHAIRMAN STEVENS: In response to your letter of this date, I wish to verify that neither you nor the Committee on Governmental Affairs have at any time requested the investigation of any specific U.S. Secret Service agents. Your letter of June 18, 1996, requested an investigation into the preparation and disposition of background investigation files and the lists relied upon to collect the files, but did not relate to the congressional testimony of any Service employees.

In addition, the letter of Congresswoman Collins requested an investigation of the testimony before the Committee on Government Reform and Oversight by Service officials to determine how the Service concluded that it was impossible for the Service to provide lists with outdated names. She did not request that the Office of Inspector General investigate any specific Service agents.

This is also to clarify that the OIG has not represented to either the Service or the office of Senator Grassley that any specific agents are the subjects of a potentially criminal investigation. To the contrary, the OIG has specifically informed the Service and Senator Grassley's staff that the OIG inquiry is in its preliminary stages and premature characterizations of the nature of this investigation would not be appropriate.

The OIG has confirmed that two specific Service agents were named in Congresswoman Collins' letter. The OIG has not stated whether any specific Service agents are the subjects of an investigation.

Again, I am well aware that you have never requested the investigation of the two Service agents. I hope this letter clarifies the matter.

PRELIMINARY INQUIRY

Senator SHELBY. As the inspector general, I have a series of questions that I would like to ask you.

What does preliminary inquiry mean? Is that different from an active investigation, or is this just a term?

Ms. LAU. Well, sir, preliminary inquiry is the term we generally use when we are in the first stages of determining whether there is sufficient substance to the allegations to carry forward into an investigation.

Senator SHELBY. In your opening statement, you noted that you decided to open one investigation based on Senator Stevens' request of June 18, 1996, and Congresswoman Cardiss Collins' request of September 25, 1996. Is that correct?

Ms. LAU. Sir, I believe that——

Senator SHELBY. Do you want to refer back to your testimony?

Ms. LAU. Yes; I would. Thank you.

Sir, the point was that we did not open an investigation until we had received clearance from the Office of Independent Counsel to do so. Based on the chronology of our receipt of the requests, we first received Chairman Stevens' request for an investigation in June.

Senator SHELBY. When you said you had clearance from the Office of the Independent Counsel, they, as I understood, also asked you not to get into certain things. Is that correct?

Ms. LAU. That is true.

Senator SHELBY. Would you explain that?

Ms. LAU. Certainly. In my testimony I indicate that we were informed that we could proceed but under strict limitations.

Senator SHELBY. And what were those limitations?

Ms. LAU. They are slightly different for—there are two separate letters from the Office of the Independent Counsel: one addressing Congresswoman Collins' request, the other addressing Senator Stevens' request. In general, those restrictions are that we are to coordinate with the Independent Counsel's Office, to contact them first before we attempt to interview any Secret Service employee, and No. 2, that we refrain from interviewing any individual who was employed or detailed to the White House Security Office.

Senator SHELBY. Are these letters respectively dated from the Office of the Independent Counsel July 11, 1996, to you from John D. Bates, Deputy Independent Counsel, one; and September 27, 1996, from the same gentleman, John D. Bates, Independent Counsel's Office?

Ms. LAU. Yes; there should be three letters that we have provided to you.

Senator SHELBY. And then we have one September 27, 1996. Is that correct?

Ms. LAU. There should be one dated July 11 and two separate ones dated September 27.

Senator SHELBY. Right, OK. Those will be made part of the record, without objection.

[The letters follow:]

LETTER FROM JOHN D. BATES, DEPUTY INDEPENDENT COUNSEL

OFFICE OF THE INDEPENDENT COUNSEL,
Washington, DC, July 11, 1996.

VALERIE LAU,
Inspector General, U.S. Department of the Treasury,
Washington, DC.

DEAR INSPECTOR LAU: We have received a copy of the June 18, 1996 letter to you from Senator Ted Stevens, Chairman of the Committee on Governmental Affairs, requesting that you respond to a series of questions concerning the allegation that one or more persons employed in the White House obtained improper access to Federal Bureau of Investigation background investigation reports. As you know, the request relates to a matter under investigation by this Office.

It is our desire that you respond to the inquiry from Senator Stevens, and any other Congressional inquiries that you may receive, in the fullest possible way without infringing on the ongoing criminal investigation that this Office is conducting. However, under the circumstances we are fearful that you will not be able to respond to many of the questions posed without adversely affecting our investigation. The Secret Service had an active role in the matter under investigation by this Office, and Senator Stevens' letter asks numerous questions about Secret Service policies and practices relating to White House requests for background investigation files. Hence, our strong preference is that your office not conduct any investigation or proceedings relating to this matter.

However, should you undertake to respond to Senator Stevens' letter, we request that you refrain at this time from interviewing anyone who was employed in or detailed to the White House Personnel Security Office since January 20, 1993, and from interviewing Secret Service employees. Additionally, while we do not object to your office interviewing other Treasury Department personnel, we request that you share with us any information that you uncover that may be relevant to matters within our jurisdiction. Finally, we would ask that your office refrain from expressing any official view, to Congress or otherwise, on matters within our jurisdiction, including the matters raised in questions 7, 8, 9 and 10 of Senator Stevens' letter. Please furnish us a copy of any response you provide to Senator Stevens' letter.

If you have any questions about particular investigative steps, please contact me or Associate Counsels Rod Rosenstein or Steve Colloton, at 202/514–8688.

Thank you for your assistance.

Sincerely,

JOHN D. BATES,
Deputy Independent Counsel.

LETTER FROM JOHN D. BATES, DEPUTY INDEPENDENT COUNSEL

OFFICE OF THE INDEPENDENT COUNSEL,
Washington, DC, September 27, 1996.

VALERIE LAU,
Inspector General, U.S. Department of the Treasury,
Washington, DC.

DEAR INSPECTOR LAU: On July 11, 1996, we wrote to you requesting that you refrain from taking certain investigative steps in response to an inquiry from Senator Ted Stevens, Chairman of the Committee on Governmental Affairs. Chairman Stevens had written to you on June 18, 1996, requesting that you respond to a series of questions concerning the allegation that one or more persons employed in the White House obtained improper access to Federal Bureau of Investigation background investigation reports. We requested that you refrain from taking certain steps because they would have posed a danger of interfering with our ongoing criminal investigation.

At this time, we believe that it will be possible for you to proceed to conduct much of the inquiry requested by Chairman Stevens without unduly impeding our investigation. We therefore withdraw, in part, our request of July 11.

We remain concerned, however, that certain Secret Service employees whom you may wish to interview are now working to respond to requests that we have made to the Secret Service through their Chief Counsel's office. Accordingly, we request that you notify us before conducting any interview of a Secret Service employee. That notice will provide us with an opportunity to communicate to you any concern that we may have about the timing or scope of a prospective interview. We also renew our request, as set forth in our letter of July 11, 1996, that you refrain from interviewing anyone who has been employed in or detailed to the White House Personnel Security Office since January 20, 1993. Furthermore, we request that you refrain from expressing any official view on matters within our jurisdiction, including the issue raised in question 8 of Chairman Stevens' letter.

Because our criminal investigation is ongoing, we ask that you keep us apprised of the results of any investigation that you conduct in response to the request by Chairman Stevens.

Sincerely,

JOHN D. BATES,
Deputy Independent Counsel.

LETTER FROM JOHN D. BATES, DEPUTY INDEPENDENT COUNSEL

OFFICE OF THE INDEPENDENT COUNSEL,
Washington, DC, September 27, 1996.

VALERIE LAU,
Inspector General, U.S. Department of the Treasury,
Washington, DC.

DEAR INSPECTOR LAU: We have received from your office a copy of the September 25, 1996 letter to Secretary Robert E. Rubin from Congresswoman Cardiss Collins, Ranking Member of the Committee on Government Reform and Oversight. The letter requests that Secretary Rubin direct the Inspector General to investigate the preparation of testimony given to the Committee by Secret Service officials concerning certain lists that are relevant to our ongoing criminal investigation. Your office has advised us that you wish to be responsive to Congresswoman Collins without impeding our investigation.

At this time, we believe that it will be possible for you to proceed with the inquiry requested by Congresswoman Collins without unduly impeding our investigation. We are concerned, however, that certain Secret Service employees whom you may wish to interview are now working to respond to requests that we have made to the Secret Service through their Chief Counsel's office.

Accordingly, we request that you notify us before conducting any interview of a Secret Service employee. That notice will provide us with an opportunity to communicate to you any concern that we may have about the timing or scope of a prospective interview. Furthermore, we renew our request, as set forth in our letter of July 11, 1996, that you refrain from interviewing anyone who has been employed in or detailed to the White House Personnel Security Office since January 20, 1993.

Because our criminal investigation is ongoing, we request that you keep us apprised of the results of any investigation that you conduct in response to the request by Congresswoman Collins.

Sincerely,

JOHN D. BATES,
Deputy Independent Counsel.

DECISION TO CONDUCT ONE INVESTIGATION

Senator SHELBY. When did you decide as the inspector general to conduct it looks to me like one investigation? What date?

Ms. LAU. My office initiated an investigation on October 2.

Senator SHELBY. Did you make Senator Stevens or his staff aware that you would be conducting one investigation based on both his request and also Congresswoman Cardiss Collins'?

Ms. LAU. Yes; Senate committee staff was informed after the initiation of the OIG investigation that one investigation was being conducted in response to both requests.

We did not discuss that with the Senator's staff prior to the initiation of the OIG investigation. We, however, did inform the Senator's staff of the restrictions that the independent counsel had placed on us——

Senator SHELBY. But you didn't——

Ms. LAU [continuing]. In conducting the review.

Senator SHELBY. Excuse me.

But you didn't discuss the fact that you were going to be conducting one investigation, in other words, you were going to merge them, both requests, into one investigation.

Ms. LAU. I am told that we did not discuss that issue before October 2, 1996.

Senator SHELBY. Did you discuss that with Congresswoman Cardiss Collins? You did not.

Ms. LAU. We did not.

Senator SHELBY. So, you proceeded without telling either one of these people, Congresswoman Collins or Senator Stevens, what you were going to do.

Ms. LAU. Other than we were being responsive to their respective requests——

Senator SHELBY. Sure, we got that.

Ms. LAU. Subject to the restrictions by the Office of the Independent Counsel and requesting confirmation of a continued desire for an OIG investigation.

Senator SHELBY. Is your investigation that you have been conducting consistent with Senator Stevens' request that he not be associated in any way with an investigation of Secret Service agents' testimony before Congress and that you assured him that you understood?

Ms. LAU. I believe so, Senator.

Senator SHELBY. Well, how can you explain that? Explain that to us.

Ms. LAU. We are looking at the substance of the testimony provided by Secret Service officials to the House Committee on Government Reform and Oversight, not the individuals themselves.

Senator SHELBY. When did you first learn of Congresswoman Cardiss Collins' request to investigate the testimony of the Secret

Service before the House Government Reform and Oversight Committee?

Ms. LAU. I believe we received a copy of the request through the Executive Secretariat function at Treasury sometime on September 26.

Senator SHELBY. Can you explain to the committee today how the Congresswoman's request was referred to your office for action?

Ms. LAU. Yes, I can.

Senator SHELBY. And how was that?

Ms. LAU. On October 4, I was formally transmitted a copy of Congresswoman Collins' request from Deputy Secretary Summers. He provided to me her letter for whatever action I deemed appropriate, and he specifically suggested that I coordinate with the Office of the Independent Counsel.

Senator SHELBY. And this letter to you is dated October 4. I believe I have a copy here.

Ms. LAU. Yes.

Senator SHELBY. That will be made part of the record, without objection.

[The memorandum follows:]

MEMORANDUM FOR VALERIE LAU, INSPECTOR GENERAL

WASHINGTON, DC, *October 4, 1996.*

From: Deputy Secretary Summer
Subject: Letter From Congresswoman Collins

Attached is a letter which the Secretary received from Congresswoman Cardiss Collins concerning recent testimony of two Secret Service agents before the House Committee on Government Reform and Oversight regarding the so-called FBI Files Investigation.

By this Memorandum I am referring this matter to you for whatever action you deem appropriate. As you are aware, related matters are being investigated by the Independent Counsel, and I strongly suggest that you consult with his Office so that your work does not interfere with his investigation.

For your information, Director Bowron has looked into this matter, and the Secret Service has responded directly to the Congresswoman regarding certain explanations she requested. I have attached a copy of his letter.

Thank you for assisting the Department in this matter.

Attachment.

OFFICE OF INSPECTOR GENERAL CHRONOLOGY

Senator SHELBY. How could you open an investigation as the inspector general without formally receiving the referral of the matter to your office from the Secretary of the Treasury's Office?

Ms. LAU. As I hope you can see from the chronology that we provided, that our attention to this matter had been raised earlier and we refrained from opening an investigation based on our communication with the Office of the Independent Counsel.

Senator SHELBY. If I could go back just a minute.

Ms. LAU. Yes.

Senator SHELBY. I understand your chronology states that you opened an investigation on October 2. Is that correct?

Ms. LAU. Yes.

Senator SHELBY. But the request was not referred to your office until October 4 from the Secretary's office. Is that correct?

Ms. LAU. We received an advisory copy from the Department's Executive Secretariat. It was not formally transmitted by the Dep-

uty Secretary's Office until October 4, and my office did not receive it until October 7.

Senator SHELBY. In other words, you started it 2 days ahead.

Ms. LAU. As I mentioned, we have a single investigation into the matters related to the Secret Service's preparation of lists that may have been relied upon to request background investigation files. The Senate Committee on Governmental Affairs' request was previously received directly by my office.

Senator SHELBY. Do you have a copy of this? I believe you furnished it.

Ms. LAU. Yes, sir; I do.

Senator SHELBY. I would offer that as part of the record, without objection.

[The information follows:]

OFFICE OF INSPECTOR GENERAL CHRONOLOGY

June 18, 1996.—Senator Stevens, Chairman of the Senate Governmental Affairs Committee, requested that the Treasury Office of Inspector General conduct an investigation to answer 10 specific questions relating to policies on handling background investigation files, requests for such files and the source of the list used to request such files.

We contacted the Office of Independent Counsel upon receipt of the request. We informed the Committee's Counsel we had consulted the Office of Independent Counsel and would not conduct any work until we heard from the Office of Independent Counsel.

July 11, 1996.—The Office of Independent Counsel responded that the Office of Independent Counsel had a "strong preference that [we] not conduct any investigation or proceeding relating to this matter." We informed the Committee's Counsel of the Office of Independent Counsel's strong preference that we not proceed.

September 25, 1996.—Congresswoman Collins, Ranking Minority Member of the House Committee on Government Reform and Oversight, wrote to Secretary Rubin requesting he direct the Office of Inspector General to investigate "the preparation of the testimony before the Committee by Secret Service officials to determine how and why the testimony was developed that led to the conclusion it was impossible for the Secret Service to provide lists with outdated names".

We independently consulted the Office of the Independent Counsel to determine whether their preference that we refrain from initiating action pertained to this request as well.

September 27, 1996.—In separate letters, the Office of Independent Counsel responded to our concern regarding initiating work on both requests. The Office of Independent Counsel described the circumstances under which an inquiry could proceed without impeding its investigation. Generally, those were: to consult with the Office of Independent Counsel prior to each interview and to refrain from interviewing anyone who had been employed in or detailed to the White House Security Office since January 20, 1993.

We contacted staff from both requesters' offices to ask whether they wished the inquiry to proceed given the limitations posed by the Office of Independent Counsel. Both asked us to proceed.

October 2, 1996.—Case opened.

October 4, 1996.—Deputy Secretary Summers forwarded Rep. Collins letter for whatever action the Inspector General deemed appropriate and with a specific suggestion to coordinate with the Office of Independent Counsel.

TIMING OF INVESTIGATION

Senator SHELBY. How long after receiving Senator Stevens' letter of June 18 requesting an investigation of the FBI files matter did you contact the Office of the Independent Counsel? In other words, what lapsed there?

Ms. LAU. We provided it immediately. I don't have a record of specifically what date, but we were not formally notified until that July 11 letter of the Office of the Independent Counsel's position.

Senator SHELBY. About how long was it after you received the letter from Congresswoman Cardiss Collins did you contact the independent counsel?

Ms. LAU. Also, as you can see by the chronology, the Office of the Independent Counsel had responded specifically to our referral of the Cardiss Collins' request on September 27. So, we would have consulted them sometime prior to that date.

Senator SHELBY. How could you have contacted the Independent Counsel's Office prior to September 27 when you did not receive the referral from the Secretary of the Treasury's Office until October 4? Was that anxiousness on your part or what?

Ms. LAU. Well, Chairman Shelby, you did earlier ask me how did we first learn of the request and I mentioned that we had received a courtesy copy through our Executive Secretariat function at the Department of the Treasury. So, we had been aware, before it was formally referred to us, that this letter from Representative Collins to the Secretary did exist.

MEMBERS PRESENT AT DISCUSSION OF THIS INVESTIGATION

Senator SHELBY. Have you or members of your staff met or discussed this investigation with other members of the Treasury staff, the Secretary of the Treasury, the White House, or any other office outside the Inspector General's Office?

Ms. LAU. I have——

Senator SHELBY. Any office.

Ms. LAU. Any office?

Senator SHELBY. Yes.

Ms. LAU. I have not discussed any matter related to this with the Secretary. I have received from the Deputy Secretary this correspondence and informed him that——

Senator SHELBY. This is Lawrence Summers?

Ms. LAU. Yes; Deputy Secretary Summers, and informed——

Senator SHELBY. And who else over in Treasury?

Ms. LAU. And I believe the Chief of Staff was present at that discussion.

Senator SHELBY. What about anyone at the White House?

Ms. LAU. No; no one at the White House. We have——

Senator SHELBY. You haven't talked to White House Counsel about this?

Ms. LAU. No.

Senator SHELBY. Has anyone in your office talked to the White House Counsel about an inspector general's investigation of these two agents?

Ms. LAU. No. No, sir; there is no investigation of the two agents and there was no communication with the White House Counsel's Office with regard to the matter.

Senator SHELBY. Let us go back over it again.

Ms. LAU. Sure.

Senator SHELBY. Who have you discussed your preliminary investigation into the testimony of these two Secret Service agents——

Ms. LAU. If I could clarify.

Senator SHELBY. Sure.

Ms. LAU. The discussions I mentioned with the Deputy Secretary and the Chief of Staff were in general terms regarding the referral

of the Cardiss Collins' request, that the matter was referred for whatever action I deemed appropriate. I was not directed to conduct an investigation. I have the responsibility to determine what I would do myself.

It was suggested in the letter that I consult with the Office of the Independent Counsel to be sure that we did not impede with an ongoing investigation. We did so.

Senator SHELBY. But at that point——

Ms. LAU. I wanted to clarify that point.

Senator SHELBY. Excuse me a minute. But at that point when you were meeting with the Deputy Treasury Secretary, Lawrence Summers, and the Chief of Staff, who would the Chief of Staff be?

Ms. LAU. The Chief of Staff is Ms. Sylvia Mathews.

Senator SHELBY. OK, and anyone else?

You had already opened an investigation, had you not, before then? A preliminary investigation.

Ms. LAU. I am sorry. I cannot recall the exact date that we met to discuss that issue.

Senator SHELBY. But you would have that somewhere on your calendar or they would have it.

Ms. LAU. I can provide that for the record.

Senator SHELBY. Would you furnish that for the record of this committee?

Ms. LAU. Yes, I will.

Senator SHELBY. Could you do it tomorrow?

Ms. LAU. I will do it as soon as possible, yes.

Senator SHELBY. Who was present when you were discussing your preliminary investigation with the Deputy Secretary of the Treasury and the Chief of Staff? Were these the only two people present? Was it other people on your staff?

Ms. LAU. No other individual from my staff was present, no.

Senator SHELBY. Did the Deputy Secretary or the Chief of Staff suggest in any way to you that you should proceed with your investigation after this testimony?

Ms. LAU. No; they indicated that they were providing it to me for my determination of what would be the appropriate action to take. Again, I emphasize that the letter specifically suggested that I contact the Office of Independent Counsel to ensure that we in no way hampered their ongoing investigation.

Senator SHELBY. If someone in Congress, the Senate or the House, writes you a letter and says that they want you to scrutinize or to investigate the testimony of the Secretary of the Treasury that you work for in a sense or the Deputy Secretary of the Treasury's testimony before perhaps this committee or any other committee, would you proceed to do that?

Ms. LAU. That would definitely be an awkward position to be placed in, and it would depend——

Senator SHELBY. Is it any more of an awkward position than investigating two career law enforcement agents at the Secret Service?

Ms. LAU. Again, I would like to reiterate that these two agents are not the subjects of an investigation.

Senator SHELBY. They are not?

Ms. LAU. We are focusing on the preparation of the testimony that was provided that led to the conclusions that the Secret Service could not provide a list with outdated names.

REFERENCE TO SECRET SERVICE LETTER

Senator SHELBY. Do you recall the letter? What was the letter from the Secret Service itself? Let me just go back to this and I will defer to Senator Kerrey.

Ms. LAU. My office was not provided with a copy of that letter.

Senator SHELBY. Well, I will share a copy. We will make you a copy.

Ms. LAU. All right, thank you.

Senator SHELBY. This is a letter dated November 27 to me as chairman of the subcommittee on behalf of the Secret Service, and I quoted this letter earlier, but to go back to it in pertinent part. Mr. Parkinson is going to give you a letter. If you will turn to the second page, last paragraph.

On Monday, October 21, 1996, Inspector General Lau requested a meeting with Secret Service officials to discuss the pending investigation. Assistant Director for Investigation, K. David Holmes, and Chief Counsel John Kelleher, attended on behalf of the Secret Service. Treasury Inspector General, Counsel Vassar—that is your counsel. Is that correct?

Ms. LAU. Yes, sir.

Senator SHELBY [reading]. Deputy Inspector General Richard B. Calahan and Regional Inspector General for Investigation Emily Coleman met with these Secret Service representatives.

Do you remember that meeting?

Ms. LAU. Yes, sir; I do.

Senator SHELBY [reading]. At this meeting the Secret Service was again advised there was an active investigation of Special Agents Libonati and Undercoffer, and further that this matter was potentially a criminal investigation.

Now, isn't that at odds with what you are telling this committee?

Ms. LAU. Sir, I do not recollect that meeting in the same manner that it is presented on this document.

Senator SHELBY. Do you have minutes of the meeting or do you have a transcript of the meeting?

Ms. LAU. I have the individuals who were present at the meeting with me, sir.

Senator SHELBY. Are you disputing the letter basically here this evening of the Secret Service account of that meeting?

Ms. LAU. Yes, sir; I am. And also, if I could——

Senator SHELBY. OK.

Ms. LAU. There is a letter that is dated October 23 that I had not yet provided to you. I would like to refer to it.

Senator SHELBY. Can you make a copy of that and furnish it for the committee, for Senator Kerrey and I?

Ms. LAU. Yes, sir; I would be pleased to.

Senator SHELBY. Can we see the letter?

Ms. LAU. Yes.

Senator SHELBY. Do you have a copy of it?

Ms. LAU. I do not have an extra copy.

Senator SHELBY. Could we see it?

Ms. LAU. Certainly.

Senator SHELBY. Is this a letter that is to whom?

MEMORANDUM TO SECRET SERVICE

Ms. LAU. This is a memorandum to the Chief Counsel of the Secret Service from my counsel that refers specifically also to that meeting.

Senator SHELBY. What is the date of that?

Ms. LAU. The date of that is October 23, 1996.

Senator SHELBY. And what was the date of the meeting?

Senator KERREY. Two days earlier.

Senator SHELBY. Two days earlier.

Ms. LAU. October 21.

Senator SHELBY. OK.

Ms. LAU. I am being provided a copy of that. If I could read this letter.

Senator SHELBY. You go ahead and proceed.

Ms. LAU. Again, this memorandum is to the Chief Counsel of the Secret Service from the counsel to the inspector general regarding the requests from the Subcommittee on Administrative Oversight and the Courts.

It has come to our attention that staff members of the Subcommittee on Administrative Oversight and the Courts may be under the misimpression that the Office of Inspector General has communicated to the U.S. Secret Service a reservation with regard to any employee of the Service responding to inquiries or requests of the subcommittee.

I wish to confirm our recent conversation of October 21, 1996, that the OIG does not have any objections to the Service or its employees communicating directly with any congressional committees or responding to any congressional requests with regard to matters involving the handling of FBI background files.

Given that the OIG will be requesting access to the Service's files, you are aware of an OIG investigation and generally the issues being examined by this office. As the OIG inquiry is in its preliminary stages, premature characterizations of the nature of this investigation would not be appropriate.

I hope this memorandum will clarify the OIG's position on these matters. I would appreciate it if you would apprise those Service employees with a need to know of the OIG position.

CRIMINAL INVESTIGATION

Senator SHELBY. Did you in this meeting that we were referring to a few minutes ago that I quoted from the letter with all these people—did you talk about a criminal investigation? Were those words used by you or the Secret Service or by anyone in your presence?

Ms. LAU. I believe that the Secret Service did use those words, but we sought to clarify the situation.

Senator SHELBY. And how did you clarify that?

Ms. LAU. Just a moment please.

Senator SHELBY. Sure.

[Pause.]

Ms. LAU. This is Emily Coleman, my Regional Inspector General for Investigations, who was also at the meeting and who is referred to in their memorandum.

Senator SHELBY. Ms. Coleman.

Ms. COLEMAN. During the meeting, the two representatives from the Secret Service wished to discuss our investigation and what we

were doing. We advised them that we were looking into the letters from Senator Stevens and Congresswoman Collins. They insisted on asking and demanding if it was a criminal investigation, an administrative investigation, civil investigation, at which time I responded that this investigation was just opened. It was in its preliminary stages and that we did not know what it was at this point in time. We did not know whether it was administrative, civil, or criminal.

I also let them know that we had no agents under investigation. We had no subjects at the time of our investigation and at the time of that meeting. We still do not. We are looking into preparation of testimony and also Senator Stevens' questions.

I also informed them that if, in fact, we did find something criminal, that the Office of the Independent Counsel had requested we refer that kind of matter to them for investigation and that we not do it.

Senator SHELBY. So, that was discussed there, was it not?

Ms. COLEMAN. It was discussed——

Senator SHELBY. So, the reading, if you read in context the letter that I have made part of the record from the Secret Service, it speaks for itself. You did talk about——

Ms. COLEMAN. We talked about possible——

Senator SHELBY. About possible criminal investigation.

Ms. COLEMAN. That is correct because in an investigation, you do not know at the beginning of an investigation, when you receive it, where is it going to go. It can go administratively, it can go civilly, or it can go criminally, or it goes away because the allegations are proven unfounded.

The Secret Service at that meeting—Chief Counsel John Kelleher kept insisting that we had a criminal investigation. I was telling him that it was not criminal because we could not make that determination with the preliminary information that we had.

Ms. LAU. To put this matter into context, we prefer not to characterize the investigation in any way, whether it be civil, administrative, or criminal.

Senator SHELBY. Who appointed you Inspector General of the Treasury?

Ms. LAU. I was appointed Inspector General of the Treasury Department by President Clinton with the confirmation of the U.S. Senate.

Senator SHELBY. Sure.

What did you do before you were appointed inspector general?

Ms. LAU. I have been a career Federal employee. I was a senior evaluator with the U.S. General Accounting Office and a contract auditor with the Defense Contract Audit Agency. I also have been the Director of Policy at the Office of Personnel Management.

Senator SHELBY. Have you ever been involved in an investigation or a preliminary to anything like this of this magnitude?

Ms. LAU. I have not prior to my present position; I have during my current tenure as the Treasury Inspector General.

Senator SHELBY. I have some other questions. I am going to defer to Senator Kerrey. I appreciate your indulgence.

Senator KERREY. Thank you, Mr. Chairman.

Just to be clear, therefore, you are not investigating Agent Libonati and Agent Undercoffer.

Ms. LAU. That is true. We are not investigating the two agents. We are looking into the preparation of the testimony that they provided.

Senator KERREY. And also to be clear, as far as potentially criminal, if there is any criminal case to be brought, it would not be brought by your office at all.

Ms. LAU. That is true.

Senator KERREY. Any suspicion of criminality you would reference to the independent counsel.

Ms. LAU. That is true, sir.

Senator KERREY. As I said in my opening statement, I am sure—well, I am not sure. Perhaps you did not pay attention, but I am trying to determine under what circumstances you would say to a Member of Congress, I appreciate your letter. Thank you very much. We do not do that. We do not do that sort of thing.

Or in this case, I got an independent counsel already taking this thing on. Indeed, the independent counsel's letter of July 11 references the Secret Service at the time. That is 6 days before these two agents testified. So, even before they testified, the Secret Service is under investigation by the independent counsel. Is that fair or not fair?

Ms. LAU. It is fair that we defer to the Office of the Independent Counsel in these matters and we did defer based on their July 11 letter.

Senator KERREY. But you got a July 11 letter from the independent counsel that indicates that the independent counsel is investigating the Secret Service, perhaps including the two agents who testified 6 days later.

Ms. LAU. If you would allow me a moment to refresh my memory.

[Pause.]

Ms. LAU [continuing]. Yes, sir; in the second paragraph of the letter to which you refer, the July 11 letter, it does refer specifically to the Secret Service and the Office of the Independent Counsel's strong preference that we not conduct an investigation into——

Senator KERREY. Let me read what for me at least—this is July 11, 6 days before the testimony, the Office of Independent Counsel—they are concerned that your investigation could infringe in their language—infringing on the ongoing criminal investigation that this office is conducting. So, the Office of Independent Counsel is conducting a criminal investigation.

Ms. LAU. Yes, sir.

Senator KERREY. So, there would be no doubt about that.

In their radar site, they go on to say, under the circumstances, we are fearful that you will not be able to respond to many of the questions posed without adversely affecting our investigation. Secret Service had an active role in the matter under investigation this office.

So, it is not fair to say that a criminal investigation began 6 days later if on the 11th of July the Office of Independent Counsel indi-

cates they have a criminal investigation underway that includes the Secret Service.

Ms. LAU. Yes, sir.

OVERSIGHT AUTHORITY OF INSPECTOR GENERAL

Senator KERREY. What circumstances would produce from you—let us say I send you a letter and I say, I think somebody over at the Internal Revenue Service is using their car improperly and I would like to have you investigate them. What would you say to me?

Ms. LAU. Senator, we do receive a number of——

Senator KERREY. I will bet you do. [Laughter.]

Ms. LAU [continuing]. Letters from Members of Congress, and we evaluate each of those. Some of them we refer, for example, to the law enforcement bureaus themselves. Under the Inspector General Act amendments that established my office, an internal affairs function was retained in each of the four law enforcement bureaus. Under the act, I have oversight authority over these units. After evaluating the issue, if we believed that the matter could be better addressed by the bureaus themselves, we would refer it.

Senator KERREY. Do we not have some redundancy here? Did it come under discussion that the answer to Senator Stevens' request, let alone the second request—that the answer should have been, look, the independent counsel is looking into this thing and we just do not think we should investigate it? Period. We do not think there is a need to. It is already going forward. In fact, a criminal investigation is going forward, and we think until that criminal investigation is completed, until the independent counsel finishes their work, we should not do anything. Was that discussed internal to your office when the letter from Senator Stevens arrived?

Ms. LAU. Oh, certainly, we would defer to the Office of the Independent Counsel.

We, during my tenure as inspector general, have tried to be of service to each congressional requester. There are some requests where we are not able to be of service. In particular, these two requests, Chairman Stevens, as chairman of the Senate Governmental Affairs Committee, and Congresswoman Collins, as ranking member of another prominent House committee, did gain our attention. We did consult with them. It was very clear that we were deferring to the Office of the Independent Counsel, that——

Senator KERREY. Senator Stevens gets my attention even if he does not send me a letter. [Laughter.]

REFUSING TO PROCEED WITH AN INVESTIGATION

I am trying to ascertain under what circumstances would you say no, we are not going to proceed with an investigation. Give me an extreme example under which it is an obvious no that you would send a no back. I presume you send letters back to Members of Congress at times saying, no, we are not going to do an investigation.

Ms. LAU. Well, an easy no is clearly when the issue is not within our jurisdiction.

Senator KERREY. Meaning?

Ms. LAU. Meaning that the matter is outside the Department of the Treasury, for example, that Treasury employees were not involved, that——

Senator KERREY. Now, let us close the universe down a bit.

Ms. LAU. All right.

Senator KERREY. Now we are on planet Earth here, the Department of the Treasury. Under what circumstances would you say to a Member of Congress, no, we are not going to do an investigation? This does not qualify.

Ms. LAU. On occasion there are matters brought to our attention that relate to a specific constituent, for example. We try to be as helpful as possible. We evaluate whether there is an issue to be pursued and whether it is within our jurisdiction. If there is not, we do inform the Member that that is the case.

Senator KERREY. Can you be precise? Again, just pick a name. John Doe is my constituent. What kind of request might I make on behalf of John Doe?

Ms. LAU. Certain matters might be more appropriately addressed by other bodies, for example, a matter that might go before the Merit Systems Protection Board if it were a matter on behalf of an individual who is or was a civil servant or the Equal Employment Opportunity Board. That is clearly outside of our jurisdiction.

Senator KERREY. You are in an unusual situation. Senator Shelby asked it earlier, what happens if you get a request on your boss? But is Secretary Rubin your boss?

Ms. LAU. Secretary Rubin is my boss, yes.

Senator KERREY. You take instructions from Secretary Rubin? If he says, I do not want you to do an independent investigation, you do not do it?

Ms. LAU. Sir, the Inspector General Act prescribes the relationship between the head of the agency and the inspector general. While the inspector general reports to and is under the general supervision of the head of the agency, the head of the agency cannot prevent or prohibit the inspector general from initiating, carrying out, or completing any audit or investigation or from issuing any subpoena, with the exception of certain unique circumstances delineated within the act.

Senator KERREY. Again, in answer to Senator Shelby's question, you were not appointed by Secretary Rubin. You were appointed by the President.

Ms. LAU. That is true.

Senator KERREY. Under what circumstances can Secretary Rubin fire you?

Ms. LAU. He cannot, sir.

Senator KERREY. That is not my idea of a boss then if he cannot fire you.

You are independent of him, are you not? Can you be more specific? Does he give you instructions as to how to proceed?

Ms. LAU. No.

Senator KERREY. Would you contact him in this case? You did not contact him in this case and say——

Ms. LAU. No; there were no discussions between us on this matter.

Senator KERREY. That is as a consequence of the legal requirements of the inspector general's job. All inspectors general are that way.

Ms. LAU. Yes; all inspectors general are under the general supervision of the head of their agencies, but not under the specific direction of the——

Senator KERREY. In my view, indeed, the inspectors general must be doing a good job if the Secretary does not like them. It is not uncommon for the inspector general and the Secretary not to get along very well if the consequence of the investigation is themselves. Is that fair or not fair?

Ms. LAU. The relationship between the Secretary and the inspector general varies from Department to Department, but in essence I am the cop of the Department. So this role can occasionally create an uncomfortable relationship.

Senator KERREY. But who do you go to then in a situation like this where you have got really no—you have got a tough call. You got a call here where I have got a criminal investigation ongoing with the Independent Counsel's Office, and now I have got a request by a senior Member of Congress, the oversight committee, asking for an investigation. So, you got a decision to make. Do I say to Senator Stevens, no? And as I said earlier, I do not like to tell Senator Stevens no, so I understand the difficulty that you face. So, you need some basis, if you are going to say no to him, to say no.

Are you saying that there is no person that you talk to? Is there a standard operating procedure inside the inspector general's club? Is there some guidance that you have got external to your own instincts?

Ms. LAU. I am afraid that the buck stops here. I am the one who makes the decisions.

Senator KERREY. So, in this case when you made this decision, were you tempted to say—what was your argument to say no? Let us hypothetically say you decide no, I should send Senator Stevens a letter. How would you draft a letter to Senator Stevens saying, I am not going to do it?

Ms. LAU. In this instance, it appears that it is a "damned-if-you-do or damned-if-you-do-not" situation.

Senator KERREY. Just for future reference, I think given the charged nature of this thing, the later letter that came from Congresswoman Collins—I think that one deserved a response to say, look, let me make it clear we are not going to respond to testimony that has been given and your dissatisfaction with that testimony. The inspectors general are going to be in an awful lot of hot water if they do not develop a procedure whereby they say to a Member of Congress, it is going to take a very extraordinary set of circumstances for me to respond affirmatively to testimony that has been provided to your committee.

In this case it seems to me it ended up being that the case gets opened coincident with that letter rather than as a consequence, but boy, the appearance is the investigation is opened as a consequence, not coincident, if you follow what I am saying.

If there is no external guide, no rule book, no code of conduct for the inspectors general and how they are going to proceed, my ad-

vice is in an unwritten way in the future if a Member of Congress calls and says, I just had an employee of the IRS or the EPA or whoever and I do not like their testimony and I want you to investigate, I think your answer should be no. Certainly your first instinct ought to be no, and let us prove up why the answer ought to be yes because it clouds the work of your office because the appearance was, at least in this case initially until you cleared it up—and I can see all the records here. The appearance is that the investigation is opened up as a consequence of two agents who testified before a committee.

Ms. LAU. And that was not the case, sir.

Senator KERREY. Thank you.

Ms. LAU. Thank you for the advice.

Senator SHELBY. If that was not the case, we need to go through some more answers, I believe. I have some other questions.

Ms. LAU. All right.

RESPONSIBILITIES OF THE INSPECTOR GENERAL

Senator SHELBY. You were appointed by the President of the United States, Bill Clinton in this case, to your present job.

Ms. LAU. Yes, sir.

Senator SHELBY. Before this, what did you do again? Were you a prosecutor in any way?

Ms. LAU. No; I was not, sir.

Senator SHELBY. All right. What is your educational background?

Ms. LAU. I have a bachelor's in accounting. I am a certified public accountant.

Senator SHELBY. CPA.

Ms. LAU. Yes; and I have a master's degree in career development.

Senator SHELBY. But you have not been a prosecutor or a U.S. magistrate or any involvement in law enforcement in that regard, have you?

Ms. LAU. No, sir; not before becoming the inspector general 2 years ago in October 1994.

As inspector general, I also have a substantial responsibility in the audit area. For example, we are this year auditing the first Departmentwide financial statements for the Department of the Treasury, which collects 98 percent of the Government's revenue and carries all its debt. So, my CPA comes in very handy there.

Senator SHELBY. Sure, it does. But you have not had to make in your previous jobs judgment as to whether to investigate someone or people like a prosecutor has to do like the district attorney does or a Federal judge makes rulings on evidence and so forth. You have never been involved in that before in your career. Is that correct?

Ms. LAU. I did not have that experience prior to this position, sir.

Senator SHELBY. So, if Senator Kerrey and I, in conducting the business of this committee over Treasury—and we have done this together, and also on the Intelligence Committee—if we wrote a letter and asked you as inspector general at Treasury to investigate so and so's testimony before this very subcommittee because we vehemently disagreed with what they had to say, would you investigate that for possible criminal conduct?

Ms. LAU. Not necessarily so, sir.

Senator SHELBY. Well, why did you do this or why are you doing this investigation currently?

Senator Kerrey alluded to the criteria. I do not know if he used that phrase, but what criteria do you use to make your decisions?

Were you in this instance—and I am going to give you time to answer all of these—were you under or did you feel like you were under some type of political pressure at the Office of Inspector General at Treasury to investigate the testimony of two career agents who gave damaging testimony about this administration in the handling of the FBI files? Did you feel in some way political pressure to do this?

Ms. LAU. As you have mentioned, the inspector general's position is unique in that one is appointed by the President, confirmed by the Senate, and cannot be fired by her boss. That does provide a degree of independence that no other individual in my Department has.

When you point out that my prior experience has not been as an investigator or a magistrate, that is true. However, I am very fortunate that I have staff with investigative experience and with legal experience to advise me in making these decisions. So, I would like to clarify that I am not without my advisers who are within my office and supervised by me.

We are an independent entity within the Department.

TESTIMONY DAMAGING TO THIS ADMINISTRATION

Senator SHELBY. Are you aware or were you aware and are you currently aware that the testimony that the two Secret Service agents gave was damaging to this administration when they gave that testimony?

Ms. LAU. I was generally unaware of their particular testimony, the substance of their testimony.

Senator SHELBY. But you have become aware of it, have you not?

Ms. LAU. I have had to become aware of it, sir.

Senator SHELBY. Sure, and conversant with it.

Ms. LAU. Yes.

Senator SHELBY. Do you realize now that that testimony was damaging to this administration in their handling of the FBI files?

Ms. LAU. Sir, again it does not matter——

Senator SHELBY. No; answer my question.

Ms. LAU. All right.

Senator SHELBY. Did you realize that it was damaging to this administration in their handling of the FBI files, which is part of the broader inquiry by the independent counsel and a subject to a real criminal investigation?

Ms. LAU. In terms of looking at their testimony, let me point out that we are looking at the factual aspects of their testimony. We are attempting to determine whether the description of the process by which the systems are maintained to generate the lists that may have been relied on to obtain background investigation files is as it was stated in the testimony. So, we are looking at the factual matters of the testimony wherever that may lead.

Senator SHELBY. If I recall your testimony earlier today—correct me if I am wrong on this. Did you contact the Independent Coun-

sel's Office two times, not one time, as to what you could get into in this investigation? In other words, were you eager to get into this investigation?

Ms. LAU. No, sir; I was not.

Senator SHELBY. Well, why would you contact them not once but twice?

Ms. LAU. We contacted them once with the letter we received from Chairman Stevens and a second time with the letter that was received from Congresswoman Collins. And the second time, we got two letters back, one amending the original position on Chairman Stevens' request, and the second addressing the issues presented by Congresswoman Collins.

Senator SHELBY. Do you believe that the independent counsel, considering the scope of their inquiry regarding the FBI files, would be the proper office to do any criminal investigation if there is one?

Ms. LAU. Yes; that is why we deferred to them. We consulted them because they were in the best position to tell us whether our pursuing the answers to these questions would constitute a hindrance to their investigation.

Senator SHELBY. When you had this meeting—again I am going to go back to this meeting with the Deputy Secretary of the Treasury, Lawrence Summers, the Chief of Staff at Treasury, the name that you related. What is the name again?

Ms. LAU. Sylvia Mathews.

Senator SHELBY. Was it just three of you? Was your counsel there too? Who was in this meeting?

Ms. LAU. I do not recall that anyone else from my staff was there, sir.

Senator SHELBY. But was this not an important meeting? Here you are the Inspector General at Treasury. You are in a meeting with the Deputy Secretary of the Treasury, the Chief of Staff of Treasury, and you are talking about a possible investigation into two Secret Service agents' testimony before Congress that was damaging to this administration. Is that correct?

Ms. LAU. I am sorry.

Senator SHELBY. What did you talk about? You talked to the Deputy Secretary of the Treasury, the Chief of Staff about this investigation that you were ready to launch or were already launching. Is that correct?

Ms. LAU. I believe the conversation was limited to the fact that I was aware that there was a letter from the Congresswoman that I had not yet formally received. I was wondering whether it would be provided to me by the Secretary or by the Deputy Secretary.

Senator SHELBY. Did they seem displeased by what you were doing, or did they seem real pleased?

Ms. LAU. Neither. I have routine biweekly meetings with the Deputy Secretary and the Chief of Staff to go over various matters that my office is involved in. For example, it may seem dull compared to this investigation, but that audit I mentioned is one where I make them routinely aware of its progress.

INTIMIDATION OF FUTURE WITNESSES

Senator SHELBY. Did it ever occur to you that investigating a matter like this, that is, the testimony of two Secret Service agents before Congress, could intimidate future witnesses from testifying before Congress as to the truth of what they know? In other words, it would serve the administration well to keep people from testifying up on the Hill?

Ms. LAU. I can say from personal experience that being asked to testify before Congress has a sobering effect on anyone, and it reinforces each individual's duty to tell the truth.

Senator SHELBY. Just because the independent counsel says they do not object to something, does that justify an investigation or do you have, as Senator Kerrey brought up earlier, a different threshold to meet? Do you have criteria to meet, or is it all subjective on your part?

Ms. LAU. There are some guidelines that we do have in terms of evaluating your request on the basis of its merits and congressional requests are among those that we consider very closely.

In terms of whether we would have pursued the specific questions posed by Chairman Stevens and Congresswoman Collins, we did make a concerted effort both to coordinate with the Office of Independent Counsel and to inform the requesters that any review that we would do in attempting to respond to their questions would be severely limited by the restrictions placed on us by the Office of Independent Counsel. So, we were attempting to be very professional and forthright in responding to those requests and also taking into consideration the ongoing investigation by the Office of the Independent Counsel.

Senator SHELBY. Did the Office of Independent Counsel, headed by Mr. Starr, ever ask your office to investigate these two Secret Service agents?

Ms. LAU. No; they did not.

Senator SHELBY. They did not.

Now, I would ask you to clarify again for the record, what was the exact date that you decided to have one investigation? In other words, you folded them into one.

Ms. LAU. The actual date would be October 2.

Senator SHELBY. October 2.

Ms. LAU. Yes, sir.

Senator SHELBY. Senator Kerrey.

Senator KERREY. Thank you very much, Mr. Chairman.

REPORT OF INVESTIGATION

Could you tell, Ms. Lau, when do you expect to finish your work, your investigation?

Ms. LAU. I am afraid I cannot even estimate that for you, sir. We have had initial meetings with the Secret Service regarding OIG access to Secret Service documents, records, and employees, but we have as yet not interviewed any individuals.

Senator KERREY. And who all do you intend to interview as a part of this work? Have you scoped the effort? You say it is preliminary. Have you scoped it to have an outline of how you intend to proceed?

Ms. LAU. At this point, sir, the——

Senator KERREY. You said earlier, by the way, that you do not want to talk about the details, and I do not want to hear the details. I am not asking for that. But you prepare an outline that organizes the work?

Ms. LAU. At this point it is premature to provide any details on that, sir.

Senator KERREY. But did you consider that your obligation is to produce a report and deliver it to Senator Stevens, Congresswoman Collins? Who do you deliver the report to?

Ms. LAU. Generally, the results of the investigation are summarized in a report of investigation, and we have not yet fully discussed within our own office the distribution of such a report beyond the normal distribution based on the findings.

Senator KERREY. Well, that seems odd, is it not? Is that not unusual that you are going to produce a report and you do not even know who you are going to give it to? Am I reaching here?

Ms. LAU. No, sir; this is a different type of investigation due to the Office of the Independent Counsel's involvement and the fact that the Secret Service may wish to limit the distribution of or request redactions to the report due to concerns regarding their protective mission.

Senator KERREY. That certainly cannot infringe upon your ability to be independent, my asking who you are going to deliver the report to.

Ms. COLEMAN. The report of investigation, once it is finished, would be distributed as follows. The Office of Independent Counsel would receive a copy. They have requested a copy of the report when it is completed. Also, Senator Stevens and Congresswoman Collins would, if they requested—Chairman Stevens would be entitled to a copy of our report and would receive a copy. Congresswoman Collins—the distribution to her would be limited, but she would be given a summary of the results of the report in a letter from Inspector Lau to her.

Senator KERREY. Inspector Lau, can you tell me how many reports have you produced in the last 4 years? You have been Inspector General of the Treasury for how many years?

Ms. LAU. Since October 1994.

Senator KERREY. Since October 1994, so you have been on the job now for 2 years. How many reports have you produced in that period of time?

Ms. LAU. I do not know the exact number, but I would be happy to provide that for the record.

Senator KERREY. Ballpark it. Twenty, a hundred? Are we talking about lots here, three or four?

Ms. LAU. In terms of our investigative staff, we have a relatively small investigative organization. As I mentioned, the Inspector General Act in setting up the inspector general function at Treasury retained the internal affairs units of the four law enforcement bureaus, and therefore we have a small corps of 1,811 law enforcement officers.

Senator KERREY. I do not want this thing to go completely off the charts here, but I am just trying to get a sense of the work that you produce in 2 years. Have you produced 20 reports?

Ms. LAU. Sir, I am told that in the last 2 years we have issued approximately 100 reports of investigation.

Senator KERREY. So, 100 reports have been issued.

REQUESTS FOR INVESTIGATIONS

In those cases do you initiate the investigation? How many investigations do you initiate without getting a "Dear Inspector Lau" letter from a Member of Congress?

Ms. LAU. Well, we receive allegations that we need to vet and to determine if they will be pursued further by OIG agents or bureau internal affairs agents.

Senator SHELBY. From who?

Ms. LAU. From many different sources. Most inspectors general have a 1–800 number that is called their hotline where individuals can anonymously raise concerns about particular practices.

Senator KERREY. I would very much appreciate it if you give me the pattern of requests, who requests them, who you distribute the requests to, how you initiate, and in particular, how many you have initiated as a consequence of requests made by Members of Congress.

Ms. LAU. All right.

Senator KERREY. I really would like to see the pattern of requests and how you produce the product and where the product goes. Clearly, you are not going to produce a product that could lead to a criminal charge. You are not going to file a criminal charge against anyone, are you?

Ms. LAU. In this matter, sir?

Senator KERREY. Yes.

In the 100 cases that you have done reports, do you file criminal charges?

Ms. COLEMAN. Yes; criminal charges are filed by the U.S. attorneys' offices or State prosecutors based on OIG reports.

Ms. LAU. Yes.

Senator KERREY. So, you can enter a court of law and file a charge against a subject.

Ms. LAU. Yes, sir; charges can be filed by the prosecuting authority based on OIG reports.

Senator KERREY. Can you provide the information and numbers that you have done that with in the last 2 years.

Ms. LAU. We would be happy to.

Senator KERREY. Is it a larger number or a small number?

Ms. LAU. We would be happy to provide you the number no matter what it is.

Senator KERREY. Do you have in those situations individuals who will come with counsel and ask the questions that we heard earlier that were referenced in the letter that this committee received saying that we feel of necessity that we have to go out and hire defense in order to be able to proceed with this investigation? Is that a pretty normal thing to do?

NEED FOR A LAWYER

Do you think that Mr. Libonati and Mr. Undercoffer need a lawyer?

Ms. LAU. Well, that is their own choice.

Senator KERREY. Yes; it is my choice as well. Do you think they need a lawyer?

Ms. COLEMAN. In this investigation, again as we have stated, as I stated today——

Senator KERREY. It seems to me if they are going to need a lawyer, they may have needed one prior to this investigation. The independent counsel saying in their letter that the Secret Service is under investigation in a criminal case—if you are going to hire a lawyer, I think everybody that is involved in this thing at the Secret Service may want to hire a lawyer as a consequence of what independent counsel is doing, not as a consequence of what you are doing. And I think you need to assert that in this matter or accept the premise that these two individuals have brought which is as a result of your efforts, they are hiring counsel. They are hiring counsel as a result of the inspector general's efforts.

And you are saying that is their choice. It seems to me that you must give more clear directions to people when they are under an investigation by your agency.

Ms. COLEMAN. They are not under our investigation. They are not subjects of an investigation by our agency. Secret Service has stated that they are the subjects of an investigation, not the Inspector General's Office. We have not contacted them——

Senator KERREY. If they are not under investigation, why cannot you say in clear terms, my advice is you do not need a lawyer, at least not as a result of what you are doing?

Ms. COLEMAN. As far as I am concerned, if I was interviewing them, I would tell them no. At this point we are doing a preliminary investigation. Our training is not to advise or disadvise if someone needs an attorney because later on, they could state, well——

INSPECTOR GENERAL TRAINING

Senator KERREY. Tell me about your training. Is there an inspector general school or something?

Ms. COLEMAN. We received the same training that Secret Service, ATF, and other traditional law enforcement agencies attend at the Federal Law Enforcement Training Center in Brunswick, GA. We go to the same 8-week training course that they do. We also receive inservice training throughout our career. We work closely with Secret Service throughout our careers and the FBI.

Senator KERREY. Again, I would also like to get in the evaluation of the cases you have done thus far how you deal with a law enforcement officer who does get held to a much higher standard, by the way, in these kinds of investigations.

Ms. COLEMAN. Yes, they do.

INVESTIGATION OF LAW ENFORCEMENT OFFICERS

Senator KERREY. It is not like somebody who works for the EPA. If I am a law enforcement officer and I am involved in a criminal investigation, that goes in my file that at some point back in 1996 I was involved in a criminal investigation. And it can make it difficult for you to get a promotion. The perception can become a problem in this case.

So, it seems to me that you must have again some operating procedure that you deal with when you are approaching because Treasury has got a lot of law enforcement people.

Ms. LAU. OIG reports do not go into personnel files. Only the personnel actions taken by the employee's agency based on substantiated findings are noted in the personnel file.

Senator KERREY. You must have some operating procedure that you use when the investigation includes a law enforcement individual in order to make sure that the investigation does not produce undue damage and harm.

Ms. COLEMAN. When we open an investigation—being a law enforcement officer myself, I am very aware of that situation. I personally would not want to be investigated and have it left hanging over my head and my career. When we open up a law enforcement officer investigation—and we do have jurisdiction over most of the law enforcement investigations within Treasury—we work these cases as quickly as we can. We advise the subject when we are doing the interview of what the investigation is about. We do not broadcast our investigations throughout Treasury or throughout that person's bureau. We keep it as low key as possible so that we can control reputation damage.

Senator KERREY. Are these written procedures?

Ms. COLEMAN. These are not written procedures with the exception of the Privacy Act. These are procedures investigators follow as you are doing cases and you just know this.

It is just not something inspector general agents talk about, and I do not think any law enforcement agent would sit there to try to damage a fellow law enforcement agent's reputation. We try to work them quickly.

Senator KERREY. I am sorry to interrupt, but you acknowledge we have got a unique situation here where you say, OK, I am not going to tell anybody, but 90 percent of the American people know this case. It is not like we are talking about a little deal here that nobody knows anything about. It is on all three networks. Everybody is talking about it. It is heading into a Presidential election.

Ms. COLEMAN. I totally agree, but the inaccurate information that the newspaper received, to my knowledge, did not come from the Office of Inspector General. It came from someone else.

Senator KERREY. It does not matter. This is a little town.

Ms. COLEMAN. I agree that it is a little town.

Senator KERREY. But I am just saying in this kind of a situation, do you give some consideration to the special protection a law enforcement official might need given that it is apt to be very high profile and given that the information is going to get out?

Ms. COLEMAN. What we do in these situations—and we have again a number of cases involving law enforcement officers and other individuals at high levels in the Treasury Department—we work these cases as quickly as we can so that we can either clear the individual of the allegation and show in our report that the allegation is indeed unfounded. That report is given to the agency the person works for and the agent is cleared. If the agent finds that the facts support the allegation, we refer it to a U.S. attorney's office for criminal prosecution or civil prosecution, at which point the U.S. attorney's office makes that determination.

Senator KERREY. I appreciate it.

Mr. Chairman, I have no further questions, but I do think of the many things that are apt to come out of this hearing, I do think that one that you all need to think about is whether or not some action needs to be taken to make sure—we are talking about two individuals whose names now have been heard a couple of times on C-SPAN. I have got NBC over here sneezing. I have got reporters over at the table. These names are out there. As we all know, when you are looking at promotion, looking to hire, the boss will say, Libonati. Do I not remember that from someplace? And you do not have to trace it to anyplace.

So, you have got a very high profile situation here where two law enforcement names are out there and it may be that you all need to be a little bit more aggressive rather than just saying, it is your choice about getting a lawyer.

Senator SHELBY. Thank you, Senator Kerrey.

Let us be clear, as I understand it, Inspector General Lau.

Ms. LAU. Yes, sir.

Senator SHELBY. These special agents, Secret Service agents, are not being investigated by the independent counsel. Is that correct?

Ms. LAU. I cannot assert that. I do not know, sir.

Senator SHELBY. Well, I can from my knowledge and what I have been told.

Do you have any knowledge that they are being investigated?

Ms. LAU. No; I cannot assert one way or the other, sir.

Senator SHELBY. They are being investigated only by you and your office. Is that right?

Ms. LAU. No; as stated previously, my office is not investigating these agents. Sir, we have been asked by the Office of Independent Counsel to consult them before we attempt to interview any Secret Service employee, no names mentioned.

Senator SHELBY. Again, why did you write the independent counsel the second time to inquire about an investigation after the first inquiry told you basically to watch what you are doing? Why did you do that? Is it political pressure in the Treasury Department to punish these people?

Ms. LAU. No, sir.

Senator SHELBY. Well, why are you doing it then?

Ms. LAU. Sir, as with the first request, it was a courtesy to another law enforcement entity that was conducting an ongoing investigation, that a request that we had received looked like it would perhaps be involved in their area of review, and so we consulted them as a matter of courtesy and as a matter of course.

Senator SHELBY. But your background again is a CPA.

Ms. LAU. Yes, sir; it is. I do not apologize for it.

Senator SHELBY. Are most of your investigations over at Treasury and inspector general dealing with audits? Most.

Ms. LAU. In the Office of Inspector General, we have audits, evaluations, and investigations.

Senator SHELBY. Well, which is the most——

Ms. LAU. The most predominant activity in our office are audits.

Senator SHELBY. You answered my question.

It is just an unusual type of investigation that we have never heard of before being conducted in the heat of politics and political

overtones with an independent counsel going on. You realized all this going into this preliminary investigation.

Ms. LAU. Yes, sir.

Senator SHELBY. We have referred to a number of pieces of correspondence here today, including letters from the Department of the Treasury, the Secret Service, you as Inspector General at the Treasury, the independent counsel, several Members of Congress, interested parties, and all of those will be made part of the record without objection.

Ms. LAU. Thank you, sir.

SUBMITTED QUESTIONS

Senator SHELBY. I want to at this time thank everyone for their participation in the hearing. We have a number of questions that we are going to submit to you for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR SHELBY

OFFICE OF INSPECTOR GENERAL

Responses to the following questions are provided to the best knowledge and recollection of the Office of Inspector General (OIG).

Question 1. How many criminal investigations have been conducted by the Inspector General's office where the full investigation was performed by IG investigators and presented to the U.S. Attorney for prosecution in the past two years?

Answer. During the past two years, the Office of Inspector General has conducted and is currently conducting approximately 110 criminal investigations that have been worked exclusively by the OIG and presented to U.S. Attorneys' offices and/or state prosecutors for prosecution.

Question 2. On September 26 or 27, 1996, did your office begin the process of the investigation by selecting an investigator, or take any other action in preparation of the investigation?

Answer. No investigative action was taken on September 26 or 27, 1996.

Question 3. The fax cover sheet of the letter sent by Congresswoman Collins to Secretary Rubin which was faxed on September 25, 1996 (from Mr. Goldberg) to the Treasury Congressional Affairs Office, is marked "urgent". (*a*) Did a telephone call (from Collins' office to the Treasury Congressional Affairs Office) precede the fax of the Collins letter? (*b*) If so, what was the substance of the conversation? (c) What comments or remarks were made about the agents involved? (*d*) To whom did the Treasury Congressional Affairs Office fax the Collins letter to 45 minutes after its receipt? (*e*) Was it faxed to the Inspector General's office? (*f*) If so, what conversations took place between Congressional Affairs and the IG's office?

Answer. (*a*) Yes. (*b*) I recall that Mr. Goldberg asked for the fax number, said he was faxing a letter concerning testimony by the Secret Service and that the Congresswoman's office had received information from the Independent Counsel's office that conflicted with the Secret Service testimony. I told Mr. Goldberg that the Secret Service was handling inquiries on the subject directly and suggested that he contact them. Mr. Goldberg then stated that they wanted the letter to go to Main Treasury because the issue was important to the Congresswoman. (*c*) None, other than that noted in (*b*). (*d*) I recall that the letter was faxed to the Office of the Executive Secretary and either faxed or delivered to the Treasury Office of the General Counsel. (*e*) No. (*f*) See (*e*).

Question 4. Regional Inspector General Coleman testified that Inspector General investigators receive the same training as U.S. Secret Service agents. Secret Service agents, in addition to 8 weeks at the Federal Law Enforcement Training Center (FLETC)—referred to by Coleman—also attend two months formal training at the Secret Service Office of Training in Beltsville, Maryland and are NOT given Federal Agent status until completion of this second school. What formal training is provided to IG investigators prior to becoming 1811 criminal investigators in addition to the FLETC training referred to by Coleman?

Answer. Office of Inspector General investigators attend an eight week training course, titled Criminal Investigator Training Program (CITP), at the Federal Law Enforcement Training Center (FLETC), Glynco, GA. This course is an in-depth study of basic law enforcement concepts and techniques. New agents are provided the specific information and skills training necessary to equip them for actual job performance in law enforcement and investigations.

OIG investigators also attend a three week training class specifically designed for OIG investigators. FLETC has designed a class titled Inspector General Basic Training, which provides specialized investigative skills training for OIG investigators. This class was developed to provide training which addresses issues regarding fraud, waste, and abuse in government programs.

OIG investigators must successfully complete the CITP school before they are given federal agent status. OIG investigators also attend other courses throughout their career to enhance their job skills and knowledge.

Question 5. What is the current status of the investigation?

Answer. This investigation is currently in an inactive status pending a decision on whether the U.S. Secret Service (USSS) will grant the OIG full and unrestricted access to its records and employees associated with this investigation. The USSS has insisted that all requests for information and contact with USSS employees be accomplished through the Office of Inspection, the USSS internal affairs office.

Question 6. Is the investigation still considered a preliminary inquiry?

Answer. Yes. Please refer to the response to question 5.

Question 7. Has an identifier code been assigned to this case? If so, what is the identifier code and when was the code assigned?

Answer. Yes. Our internal case number is 96–3–208–I. The case number was assigned on October 2, 1996.

Question 8. How many hours have been expended so far on this investigation?

Answer. Approximately 110 hours have been expended on or related to this investigation.

Question 9. Could you please provide a copy of the case tracking form on the investigation or outline the information contained in the form.

Answer. A redacted copy is attached for your information.

Question 10. Was a case tracking form created for Senator Stevens' request of June 18? If so, please provide a copy of that form or outline the information contained in that form.

Answer. No case opening documents were created for either request until after the Office of the Independent Counsel notified the OIG on September 27, 1996, that it could proceed on both matters. The matter was forwarded to the appropriate regional office. Because the two requests were related, they were opened on October 2, 1996, as one investigation.

Question 11. What was the administrative status of Senator Stevens' request prior to October 2?

Answer. No proceeding or investigation was initiated pursuant to the Office of the Independent Counsel letter of July 11, 1996.

Question 12. What actions were taken, if any, between July 11 and September 25 in follow up on Senator Stevens' request?

Answer. An OIG staff member contacted a staff member of the Senate Committee on Governmental Affairs and provided a copy of the Office of the Independent Counsel letter indicating a strong preference that the OIG not initiate any proceeding or investigation. The OIG indicated a willingness to discuss whether the Committee believed that there was any assistance that the OIG could provide the Committee in light of the letter. The Committee staffer indicated that the Committee appreciated the OIG's willingness to discuss the matter and that the Committee would contact them in the future. No further communications occurred until the OIG's receipt of the two Office of the Independent Counsel letters of September 27, 1996.

Question 13. Did your office contact the Office of Independent Counsel (OIC) about Senator Stevens' request between July 11 and September 25th?

Answer. The OIG did not.

Question 14. In the hearing, Senator Shelby asked you whether you or members of your staff met or discussed this investigation with other members of the Treasury, the White House or any other office outside the IG's office. You responded specifically to one meeting you personally had with Deputy Secretary Summers and Chief of Staff Sylvia Mathews on October 7, 1996. Does this answer fully account for any and all conversations and/or meetings that may have occurred between you or your staff and other members of the Treasury, the White House or any other office outside of the IG's office?

Answer. The OIG communicated with other members of the OIG community in response to similar requests made by the Senate Committee on Governmental Af-

fairs and general issues related to OIG access. The OIG informed officials within Treasury regarding the necessity to coordinate any Treasury inquiries with the Office of the Independent Counsel. After initiation of the investigation, the OIG informed Treasury officials regarding the initiation of an investigation and USSS access issues. There have been no communications with the White House regarding this matter.

In addition, OIG staffers have communicated with staff members of the Senate Committee on Governmental Affairs and House Committee on Government Reform and Oversight regarding Office of the Independent Counsel communications, requests for additional information and confirmation of continued interest in the OIG obtaining information.

Question 15. In the October 4, 1996 memorandum to you from Deputy Secretary Summers, he refers you to the fact that Director Bowron has already looked into the matter, and that "the Secret Service has responded directly to the Congresswoman regarding certain explanations she requested." Could you provide a copy of that letter for the record?

Answer. This request has been referred to the USSS for a direct response.

Question 16. The Summers memorandum dated October 4, 1996 indicates that the Secret Service responded to Congresswoman Collins—did the IG contact the Secret Service to ask about that response (to Collins) before opening its' "preliminary inquiry"?

Answer. No. The OIG was not informed of the USSS response to Congresswoman Collins' letter until October 7, 1996.

Question 17. Did any conversations and/or meetings occur between you and/or your staff and any other individuals about an investigation into the testimony of the Secret Service prior to your receipt of the Congresswoman's letter from the Executive Secretary on September 26?

Answer. The OIG did not have any conversations or meetings regarding USSS testimony prior to receipt of the letter. OIG staff was telephonically informed of the existence of the letter concurrently or after receipt of the letter from the Executive Secretariat.

Question 18. Did you or your staff have a similar meeting(s) or conversations with the Deputy Secretary or any other member of the Treasury Department, the White House or any other office after receiving Senator Stevens request of June 18?

Answer. Please refer to the responses to questions 14 and 17.

Question 19. Did you question your staff about conversations they had with Senator Grassley's staff and the Secret Service before responding to Senator Stevens' letter on October 24, 1996?

Answer. OIG staff had fully apprised the Inspector General of such conversations and these consultations were made prior to responding to Senator Stevens' letter. In addition to being present at the meeting with USSS on October 21, 1996, the Inspector General was in attendance during telephone conversations with Senator Grassley's staff and the USSS counsel.

Question 20. Can you state unequivocally that your staff never represented to Senator Grassley's staff that the OIG was conducting a potentially criminal investigation into the testimony of two Secret Service agents?

Answer. The OIG was informed by the Office of the Independent Counsel that they would conduct any criminal investigation. OIG counsel informed Senator Grassley's staff that she did not know if the two USSS agents were subjects of an investigation. The staffer was provided with the name of the Regional Inspector General for Investigations for the Eastern Region should the staffer wish to make a further inquiry. The staffer was informed that the investigation was in its preliminary stages and that characterization as to the nature of the investigation was premature. The OIG did not inform any individual that it was conducting a criminal investigation.

Question 21. When was the Secret Service notified of your decision to open an investigation?

Answer. USSS was notified on October 18, 1996, that an investigation was opened to obtain responses to questions posed by two members of Congress.

Question 22. How was the Secret Service first notified?

Answer. The USSS was telephonically notified on October 18, 1996.

Question 23. What is the normal procedure for notifying agencies that the OIG has initiated an investigation that affects their agency?

Answer. The OIG had a perfunctory practice of notifying the affected bureau of the initiation of any investigation being conducted in that bureau. Prior to July of 1996, this policy was changed, and the OIG no longer notifies bureaus of investigations, unless there is a determination that the bureau head needs to be aware of the investigation. The revised policy adheres to the Inspector General Act of 1978,

as amended (5 U.S.C.A. App.3) and is in the OIG's best interests in accomplishing its mission in an effective manner. Treasury Directive (TD) 40–01 is currently being revised to reflect this decision.

In carrying out its investigative authority, the OIG is not required to give any notice to the head of the bureau or office involved. The Inspector General Act Amendments of 1988 (IGAA) specifically state that if the OIG initiates an investigation, the OIG "may provide the head of the office of such bureau or service . . . with written notice that the [OIG] has initiated such an . . . investigation." IGAA at section 8C(d). Further, there are no statutory or regulatory requirements that the OIG provide oral notification to bureau heads. Thus, the notification provided previously is not mandated by the IGAA and was provided by the OIG as a courtesy. While TD 40–01 currently states that "[i]t is the policy of the OIG to notify appropriate Treasury and bureau officials of OIG investigations that are being conducted within their areas of responsibility[,]" it is clear that this policy was discretionary.

Furthermore, Treasury Order 114–01 states: "When the Inspector General initiates an investigation in any law enforcement bureau, under the authority of paragraph c.(1) and (2), the IG may provide the head of the law enforcement bureau with written notice that the IG has initiated an investigation. If the IG issues such a notice, no other investigation shall be initiated into the matter and any other pending investigation into the matter within the Department shall cease; . . .". Again, this order evinces the discretionary nature of any notification provided.

Question 24. When was the Secret Service first notified of Senator Stevens' request?

Answer. The USSS was first notified by the OIG on October 18, 1996.

Question 25. Why wasn't the Secret Service notified of the investigation when it was initiated on October 2nd?

Answer. The background on the case was still being developed (the testimony was voluminous and was being read as background). It would have been premature to contact USSS. A case number was assigned on October 2, 1996. Also please refer to the response to question 23.

Question 26. Please provide the exact date that your office contacted the Independent Counsel's office after receiving Senator Stevens' request of June 18, 1996.

Answer. The OIG received the request of June 18 on June 24, 1996. The OIG contacted the Office of the Independent Counsel by telephone on either June 24 or June 25, 1996. The request was transmitted to the Office of the Independent Counsel via facsimile on June 25, 1996.

Question 27. Please provide the exact date that your office contacted the Independent Counsel's office after receiving Congresswoman Cardiss Collins' request of September 25, 1996.

Answer. The OIG received the request on September 26, 1996, and communicated with Office of the Independent Counsel on September 26, 1996.

Question 28. Prior to contacting the OIC based on Congresswoman Collins' request, had your office reached a decision to go forward with an investigation at that time?

Answer. No. The OIG anticipated that the Office of the Independent Counsel would express reservations similar to those expressed with regard to the request of the Senate Committee on Governmental Affairs.

Question 29. The OIC's letter of September 27, 1996, to you notes that your office expressed a desire to be responsive to Congresswoman Collins' request. What was your office's desire with respect to being responsive to Congresswomen Collins' request?

Answer. While the OIG generally attempts to be responsive to Congressional requesters, given the past communication from the Office of the Independent Counsel, the OIG believed that to do so would impede the ongoing Office of the Independent Counsel investigation.

Question 30. What conversations took place between the IG's Office and the OIC's Office after receipt or anticipated receipt of the letter from Congresswoman Collins? Did the IG's office indicate to the OIC that they wanted to pursue the Collins inquiry as soon as possible, and if so, why?

Answer. The OIG communicated telephonically with the Office of the Independent Counsel regarding the existence of the request for an investigation. The OIG did not indicate a desire to pursue expeditiously the Collins inquiry. The OIG did indicate a desire not to impede any ongoing Office of the Independent Counsel investigation.

Question 31. How much time did your office spend considering whether or not to proceed with investigating Congresswoman Collins' request?

Answer. Consideration of the initiation of an investigation was carefully deliberated and was done in conjunction with consideration of the Senate Committee's

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request. No consideration was made to proceed solely with Congresswoman Collins' request.

Question 32. Are there formal or informal guidelines that proceed a time line within which your office has to consider allegations in a complaint or a request for an investigation?

Answer. The OIG guidelines state that complaints received by the Office of Investigations will be assigned a case number within three days. The regional office handling the complaint has 30 days to conduct a preliminary review before it becomes an investigation.

Question 33. Are there formal or informal guidelines that provide a time line within which your office has to conduct a preliminary inquiry?

Answer. Yes, usually within 30 days. When an allegation requires the collection of additional information to determine whether the allegations have merit, a preliminary investigation is conducted.

Question 34. Provide the date of the meeting with Summers, Mathews, and Lau re: the issue of whether to open the investigation or not.

Answer. As stated in the letter from the Inspector General to Chairman Shelby, Subcommittee on Treasury, Postal Service and General Government, Committee on Appropriations dated, December 3, 1996, the meeting with Deputy Secretary and Ms. Mathews was held on Monday, October 7, 1996. "[T]he Department's Executive Secretary had distributed a copy of the letter to the Office of Inspector General (OIG) on September 26, 1996. [The Inspector General's] discussion with Mr. Summers was to inquire about the status of Congresswoman Collins' request since it related to a matter previously referred to the OIG. Mr. Summers indicated he had signed a memorandum referring the Collins' request to the OIG. That was the extent of [the Inspector General's] discussion with the Deputy Secretary and the Chief of Staff regarding Congresswoman Collins' request."

Although Mr. Summers' memorandum was dated Friday, October 4, it was not received in the OIG office until Monday, October 7.

Question 35. Provide pattern of requests to the IG's office for investigation—who requests investigations (how they get started), how the IG's office distributes the requests (for investigation), how investigations are initiated, and how many requests are initiated by members of Congress.

Answer. The OIG receives complaints and allegations from many sources, i.e., the public, departmental employees, hotline referrals, other agency referrals, and members of Congress. These complaints are reviewed by the office that receives them and makes a determination as to whether the OIG will conduct an inquiry/investigation, refer the allegations to another agency or refer it to a bureau within the Department of Treasury. If the complaint is received via the Hotline or at the Office of Investigations Headquarters office, staff review the complaint and forward it to the appropriate regional investigative office for review and action.

We currently do not maintain a system of records which tracks how many requests are initiated by members of Congress. A review of investigations conducted during the past calendar year shows that the Office of Investigations has opened twenty cases or inquiries based on requests from members of Congress. Thirteen additional requests were referred to other agencies as the OIG did not have jurisdiction over the matter. No action was taken by the OIG in five other requests. There were three requests for information by members of Congress. These statistics do not reflect requests for information from the General Accounting Office.

Question 36. Provide number of criminal charges brought by the IG's office in the last 2 years.

Answer. In the last two years, the OIG has obtained approximately 35–40 indictments, information, and pre-trial diversions. Some of these cases are still in the prosecutive stages.

CONCLUSION OF HEARING

Senator SHELBY. If there is no further business to come before the subcommittee, we will stand in recess and reconvene subject to the call of the Chair.

[Whereupon, at 4:04 p.m., Monday, December 2, the hearing was concluded and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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